United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7531

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VINCENT J. BELLOWS,

Plaintiff-Appellee,

-against-

DENNIS DAINACK and BRIAN VAN HOUTEN,

Defendants-Appellants.

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JOINT APPENDIX
(VOL. 2 - TRIAL
TRANSCRIPT)

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

UNITED STATES COURT OF APPEALS
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LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-Appellants
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3396

ROSEN & ROSEN, ESQS.
Attorneys for Plaintiff-Appellee
265 Broadway
P.O. Box 348
Monticello, New York 12701
Tel. No. (914) 794-7733

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VINCENT J. BELLOWS,

Plaintiff,

v.

DENNIS DAINACK and
LESLIE VAN HOUTE,

Defendants.

73 Civ. 1189

BEFORE: HON. MORRIS E. LASKER, D. J.
And a Jury

New York, New York
March 22, 1976
10 A. M. - Room 102

APPEARANCES:

ROSEN & ROSEN, ESQS.,
Attorneys for Plaintiff;
BY: GEORGE ROSEN, ESQ., Of Counsel

LOUIS J. LEFKOWITZ,
Attorney General of the
State of New York;
Attorney for the Defendants;
BY: A. SETH GREENWALD, ESQ.,
SETH D. CORWIN, ESQ.,
Assistant Attorney Generals.

THE CLERK: Vincent J. Bellows against Dennis Dainack and Leslie Van Houte.

(Both sides ready.)

(A jury and one alternate were duly empaneled and sworn.)

(Jury present.)

THE COURT: As I recall, none of you has served on a jury before, so I will give you a little idea of how a trial proceeds.

The case will commence by each of the attorneys addressing you in an open statement to tell you and, in Mr. Rosen's case, what he believes will be proven here; Mr. Greenwald, what will be proven or disproven, however you look at it.

I told you before that what I had to say about the case did not constitute evidence, and what the attorneys have to say about the case, however accurate it will be, and I assume that it will be accurate, does not constitute evidence. The case will be decided on what you hear from the witnesses, but the purpose of the opening statements is to put things in perspective for you, ladies and gentlemen, so you will be able to understand the testimony and the evidence better when it comes before you.

After the opening statements have been completed,

Mr. Rosen will call his witnesses and examine them, and they will be cross-examined by Mr. Greenwald; and Mr. Greenwald presumably will call witnesses and examine them. Mr. Rosen will cross-examine them and possibly later on Mr. Rosen will call rebuttal witnesses.

When all the witnesses have testified, the attorneys will address you again at the end of the case in what is called the summation, and the same remarks apply, whatever they had to say does not constitute evidence.

With that explanation I should add that after that is all over, I will instruct you as to what the law is in a case of this thing and then you will deliberate and decide the case. I hope that explanation will help you to understand things a little better.

I will now call on Mr. Rosen.

MR. ROSEN: If your Honor pleases, ladies and gentlemen:

This is what is known as a civil rights case. It is a suit brought by my client, Vincent Bellows -- that is the gentleman sitting here -- against two state police officers who are sitting at the adjacent table. The basis of the action that we have brought is to recover damages for the violation of the civil rights of Mr. Bellows.

Although he was struck during the course -- and

I will describe that to you in a moment -- the gist of the case is not the degree of personal injury he has sustained, but the suffering and depravation of his civil rights, that he should be free from police interference.

These two police officers, I shall show you in the course of the testimony, were, at the time in question, wearing their uniforms, guns and other paraphernalia of a police officer when they arrested him without justification.

Now, on July 16, 1972, in the hamlet of Livingston Manor, New York, which is a small community in Sullivan County, there was what is known as a firemen's parade. They have those every year in the various towns, and during these parades they have various tents and refreshment booths, and people congregate from all over the county and attend them as a fair and have a good time there.

The plaintiff was amongst those who went to this particular fair. There must have been at least a thousand people there, as we shall show you, and he testified to that.

He did have a few beers. They sold them as they do in these fairs in small five-ounce cups which are not wholly filled. And during the course of the day -- he lived in Livingston Manor -- he went from his home to the fair-grounds, which were about a block or two away, and would go back and forth. There was nothing to do on that day in the

town except the fair, which was the whole focus of the town on that day.

We call it a town but, legally speaking, these are only hamlets. Small communities that do not even raise itself to the level of being called a town.

After he was there a while he went home, he had something to eat, he had supper with his wife. And he went back to the fair several times, as other people did during the course of the day.

At about 10 or 11 o'clock at night he was sitting on the stoop in front of his house on Main Street in Livingston Manor when along came a police car, with the name of "Police," usually sirens and all the other equipment on it, and in this police car were the two defendants we are suing here, the men in uniform, fully armed and fully capable of doing what they wanted if there were any resistance

They called Vincent Bellows to come over. He got up and went over to the police car, which was at the curb or near the curb of the street.

They grabbed ahold of him. They wanted him to tell them something. He gave his name and who he was, and they wanted to ask questions which he refused to give.

That is part of his civil rights. They cannot walk up to certain citizens, as we shall show you and the

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court will instruct you, to make any statement whatsoever.

They grabbed ahold of him, twisted his arm, and threw him into the back of the police car.

This was at about 11 p.m., for a person sitting on a stoop doing nothing.

They took him away in the police car and, as we shall show you, he had friends with him, and he called out to them to call his lawyer; and, as we shall show you, they called me that night around midnight, 11 to 12 midnight sometime, that he was under arrest and we were making preparations for an immediate hearing.

But instead of arresting him -- now, remember, there was no arrest in this case; there was no complaint to any judge; there was no removal of the plaintiff Bellows to any police barracks. They took him up on the road several miles and took him back, and, as we claim and will show you, the time lapse from when they took him to when they brought him back was about 10 or 15 minutes.

Now, the time is fluid because, after all, no stop watches were then at hand or clocks from which we could register the time, and he was brought back and put out of the car at the Livingston Manor National Bank building, which is on the main street. There is only one real street there.

Mr. Bellows said that while he was in the car one

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police officer was driving and the other police officer pulled him by the front of his shirt and leaned over and punched him in the ribs.

We do not claim lasting permanent injuries. He recovered from it, but the idea that we are suing for here is, what right do these men have to do that thing? He was not arrested, as we shall show you, he was charged with no crime. He was not in anywise connected with any crime. And just because the police officers had uniforms on and guns and a police car, and it was two to one to fight it out, there is nothing the plaintiff could do except to go along with them, and he had no choice. He was really a prisoner without having been arrested.

The defendants, as they have admitted, did not arrest him. They had no more right than if I were to walk out in the street and grab any one of you and shove you into my car.

And that is why we are here today, and we want from the jury, when they hear the rest of this case -- I cannot tell you all of the things that will come out in the case because they come out at different stages, as the judge indicated to you. We have to have certain stages where we can show certain things, depending upon other facts that may be developed, but when we will show you these things you will

be asked, and I shall ask you, for a verdict of $25,000 compensatory damages and $50,000 of punitive damages which we have a right to do.

On the question of punitive damages, that is a matter within your discretion subject to the instructions of the court.

With that, I leave this issue with you until we produce the evidence to support what I have said. Thank you.

THE COURT: Thank you, Mr. Rosen.

Mr. Greenwald?

MR. GREENWALD: Good morning, ladies and gentlemen.

I am happy to have this opportunity to speak to you about this case. I will only speak briefly because I think that after you have listened to the evidence I think you will realize that from the evidence and the instructions of the court that the defendants, who are, as it has been said, state police officers, acted in an entirely reasonable manner, acted in good faith, did not violate any constitutional rights of the plaintiff, and certainly basically suffered no injury.

As has been said here, the plaintiff, as you can see, is a young man, and I think it has also been stated, and it will be shown, there is not really much dispute, that he was participating in a day of drinking, to say the least;

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and the defendants, whose job it is to uphold the law and protect the public, received a call on a complaint and went to Livingston Manor.

I am going to very briefly outline this because I think it bears contradiction that I think Mr. Rosen, my adversary, has failed to mention that there was a scuffle or altercation on this Main Street in Livingston Manor, and the plaintiff was involved in it. The defendants, the state police, investigated.

Then the plaintiff, you might say, disappeared. They located him just almost, you might say, by chance at this stoop, as has been stated; went over to him. They have a right to question him. They do have a complaint.

He did appear intoxicated. He failed to identify himself beyond his name, and I might say I believe the law is that you have to give your name and address and some account. Basically tell who you are. You cannot just say, "I don't have to tell you anything."

Since he was intoxicated -- appeared intoxicated -- and he had some friends with him -- a possible difficult situation developing, and this was, of course, the judgment of the state police, they asked him to come into the car. He was told certainly that he was under arrest, to that extent, when there was some question about getting into the

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car, but he basically came into the car voluntarily.

In the car he was seated in the back seat; the state police officers were in the front seat. Nothing was done to him.

In this car he proceeded to tell who he was. The state police, or the officer, one of the defendants, determined that he did not appear as intoxicated and obviously proceeded back to the main street about roughly one block from where they picked him up and let him go.

I think that I should say something about the fact that we are advancing the defense of what is called good faith. I think from the testimony and the evidence it will become apparent that the state police here were not doing anything unreasonable. They had reason to believe that a crime had been committed. They also had, and you can a arrest a person for public intoxication, at least at that time, and you should recognize, as I think it is undisputed, that the maximum time this incident took place was 15 minutes. I would say more accurately it was five to ten minutes, because the car never went past around the corner, and I think you should recognize the fact, since you are dealing with an incident of many several years ago.

The plaintiff, it seems to me, admits to a certain level of intoxication, that just, at the very least, his

recollection of this whole incident would seem questionable.

But basically, I would say that the defendants here absolutely deny that they applied any force to the plaintiff, and basically I think you will recognize that this is a really de minimis matter. The fact the plaintiff's attorney complains about no charges were lodged against his client here, I mean, it seems absurd, because they just let him go. They didn't do anything with him. They did not take him to the station house. He did not have to get a lawyer to get him out of anything. Nothing happened, basically.

So I ask you simply, of course, to listen to the evidence and bring in a fair and just verdict. Thank you.

THE COURT: Mr. Greenwald, thank you.

Mr. Rosen, do you wish to call your first witness?

MR. ROSEN: Mr. Bellows.

V I N C E N T J. B E L L O W S, the plaintiff herein, being first duly sworn, testified as follows:

THE COURT: Mr. Bellows, could you keep up voice sufficiently so that all the members of the jury and counsel can hear you.

DIRECT EXAMINATION

BY MR. ROSEN:

Q Where do you live?

A Daytona Beach, Florida.

Q Are you presently employed?

A Yes.

Q By what company?

A The Sherwin Williams Company.

Q How long have you worked for them?

A Eighteen months.

Q Are you still employed?

A Yes.

Q In what capacity?

A Salesman.

Q On or about July 16, 1972, where did you reside?

A Livingston Manor, New York.

Q Was there a street upon which you had your residence?

A Yes.

Q What was the name of the street?

A Main Street.

Q Who did you reside with at that time?

A My wife.

Q Did that house have a stoop?

A Yes.

Q Going back to the events of July 16, 1972, was there a firemen's parade or convention in the hamlet of

Livingston Manor?

A Yes.

Q Had you attended that particular fair known as the firemen's parade or convention?

A Yes.

Q At this convention, what were the refreshments that were being served to people who wanted to partake in them?

A Beer.

Q Any hard liquor involved?

A No.

Q Did they serve this in any particular size container or cup?

A I believe they were five-ounce paper cups.

Q Did you have some of them?

A Yes.

Q About how many people attended that convention?

A About a thousand, I'd say.

Q How long or number of hours was it that this particular fair ran from the early part of the day till the end of the day, if you can remember?

A I think it started around 9 o'clock in the morning.

Q When did it end?

A Around midnight.

Q Will you be good enough to tell the court and jury what time on that day you first attended the firemen's convention?

A Approximately noon.

Q How long did you stay?

A About two hours.

Q Did the firemen there perform the usual things with their ladders and hoses and all the other demonstrations?

A Yes.

Q After that, did you go anywhere?

A Yes, I left the carnival and I went to Art's Blue Room, which is on Main Street in Livingston Manor.

Q How long did you stay there, approximately?

A About three hours.

Q That would be about what time of the day?

A I stayed there to about six o'clock in the evening.

Q Did you have dinner at home?

A Yes. That's when I went home and had dinner.

Q After dinner, where did you go?

A I went back to the carnival. About nine o'clock, I went back.

Q How long did you stay?

A About till they closed. They was just getting ready to close. It was around 11, somewhere around there.

Q After it closed or approximately that time, where did you go?

A I went home.

Q What did you do?

A I went in my apartment. I talked with my wife for a while and I went back down and sat down on the steps in front of the house.

Q You call them steps?

A Stoop.

Q And I said stoop, did I not? Well, will you describe for the jury what it was? Was there a place in front of the door where you could sit?

A Just sitting on the doorstep.

Q I see. Who were the friends who were there with you at that time?

A David Miller and William Welch.

Q Is David Miller here in court today?

A Yes, he is.

Q Did you try to get William Welch?

A Yes, I did.

Q Were you able to locate him?

A No, I wasn't.

Q Did I request you to locate him?

A Yes.

Q Did an event occur at or about 11 o'clock in the night time on July 16, 1972, in front of your house involving the defendants?

A Yes.

Q Tell the court and jury in your words exactly what happened?

A A state police car pulled up in front of my house, and I noticed there were two officers in the car. And they yelled at me to come to the car, which I did.

And they asked me for identification, and I told them my name. And at that time they told me to get in the car.

And I said -- I asked them if was under arrest, and they said no, but "get in the car."

And I told them that I didn't have to get in the car if I wasn't placed under arrest.

Q What did they do?

A They got out and forced me into the car.

Q Describe how they forced you in.

A One of them opened the door and the other one took me the arm, twisted my arm up behind my back and shoved me into the back of the police car.

Q Did you say or shout anything at that time?

A I shouted to Mr. Miller to call Mr. Rosen.

Q You mean me?

A You.

Q After the police had shoved you into the back of the car and slammed the door shut, as you have just stated, what did they do with you?

THE COURT: Do you know who the policemen were or the troopers were?

THE WITNESS: Yes.

THE COURT: Who were they?

THE WITNESS: Officer Dainack and Van Houten.

THE COURT: Can you identify them?

THE WITNESS: Yes.

THE COURT: Will you?

Q Go ahead, please.

A It's the two gentlemen sitting on the end of the table,

Q Which is which?

A Mr. Van Houten is on the left and Mr. Dainack is on the right.

THE COURT: Those are the men you say -- it depends who's right and left.

THE WITNESS: Yes.

THE COURT: Our left. The witness is on the court's left and the attorney's right.

Q Will you be good enough, sir, to answer my question? What did they do with you after they slammed the door on you and put you in the back of the car?

A They drove off going east, in an easterly direction that would be on Pearl Street in Livingston Manor, which leads out to like Route 17 expressway.

Q How far did they drive you?

A About two and a half miles.

Q During the course of that drive, did they do anything to you?

A Yes.

Q Tell us exactly what they did?

A The officer that was riding as a passenger in the front seat knealt in the front seat and facing me.

THE COURT: Do you know which one he was?

THE WITNESS: Officer Dainack.

THE COURT: Give us names from now on.

Q Use names, if you do not mind. What did they do?

A He hit me in the ribs.

Q Did he grab you in any way?

A Well, he pulled me with my shirt towards him so he could reach me.

THE COURT: Can you demonstrate for us?

THE WITNESS: Yes, he grabbed me by the shirt and

pulled me up to the --

THE COURT: Indicating the grabbing hold of the collar of the shirt and pulling forward.

Q How many hands did he use to pull you with?

A One.

Q What did he do with the other hand?

A Struck me.

Q Where did he strike you?

A In the ribs

Q Can you show the jury in which part of the ribs he struck you?

A Right in here.

THE COURT: Indicating?

MR. GREENWALD: Could he stand up?

THE COURT: Yes. Indicating the plaintiff's left side.

MR. ROSEN: The plaintiff's left side.

Q Then what did the police do with you?

A They turned around at the Livingston Manor Airport and drove me back to the Sullivan County National Bank where they let me out of the car.

Q Is that in Livingston Manor?

A Yes.

Q About how far was that from your home?

A About three blocks.

Q Did you walk home?

A Yes.

Q Did you do something there after with respect to a complaint against them?

A Yes.

Q What did you do?

A I called the state police barracks at Ferndale and registered a complaint.

Q Was an investigation instituted?

A Yes.

Q Did you sign an affidavit of complaint against them?

A Yes.

Q Did the state police send an investigator to speak with you about it?

A Yes.

Q Can you tell the jury about how long a time elapsed from the time you came back to your house that night after the police released you to the time you made the complaint to the state police barracks at Ferndale?

A I made it the same night.

Q About how long a time, an hour?

A Half an hour.

Q I show you a photostatic copy of a complaint that you executed on July 17, 1972, to a police investigator, Lieutenant E. J. Minihan, and ask you whether that is a copy of your signature on this paper.

A Yes, it is.

MR. ROSEN: This paper was supplied to me by Lieutenant Minihan by the New York State Police. I offer it in evidence.

MR. GREENWALD: Let me just look at it.

THE COURT: It is dated July 17th?

MR. ROSEN: Yes, sir.

MR. GREENWALD: It has not been certified. I have no objection, but I want to see if this looks exactly the same.

MR. ROSEN: I have a letter from Lieutenant Minihan on that.

THE COURT: I do not see any problem. No objection

MR. GREENWALD: No.

(Plaintiff's Exhibit 1 received in evidence.)

Q Were you ever brought before any police justice or court by the defendants as a result of their taking you into custody that night?

A No.

Q Was any complaint ever made to any court or judge

against you by the defendants relating to the incident of that night?

A No.

Q Did you thereafter retain counsel to institute this action?

A Yes.

Q Did you go to a doctor to be examined on July 17, 1972?

A Yes.

Q Did you there --

MR. GREENWALD: Objection.

THE COURT: You cannot object before he asks a question.

MR. GREENWALD: Okay. I withdraw the objection.

THE COURT: Go ahead, Mr. Rosen.

Q What was your complaint?

A Pains in the ribs.

Q What was the name of the doctor?

A Dr. Paul D'Amico.

Q Was he a physician on Main Street, Livingston Manor?

A Yes, sir.

Q How much did you pay him?

A I don't recall.

Q It was a minor sum, wasn't it?

A Yes.

Q Did you thereafter recover from the pain you had in your left side from that blow?

A Yes.

MR. ROSEN: That is all. Your witness.

CROSS-EXAMINATION

BY MR. GREENWALD:

Q Mr. Bellows, you have previously -- you testified today that -- what time did you go to the firemen's carnival or fair?

A Approximately noon.

THE COURT: You mean the first time; is that right?

THE WITNESS: Yes.

THE COURT: I am just asking Mr. Greenwald if that is what he is asking you.

MR. GREENWALD: Yes.

Q You are positive you went around noon?

A Yes, I believe it was, because it wasn't opened before that.

Q Do you recall giving a deposition in this case where you stated on page 4, on the deposition you gave of October 29, 1975, which is, you know, in my office, where I asked you: "Do you recall what times during the day

when the carnival was taking place"?

A Yes, sir.

Q Do you recall what your answer was at that time?

A No, sir.

Q If I tell you you said, 'Approximately two o'clock in the afternoon, maybe before, I think it was around two o'clock it opened," does that change your testimony now?

A I testified I went there around noon.

Q Yet you previously testified that it opened at two?

THE COURT: You have not established that he previously did that. You said if I told you that.

MR. GREENWALD: Yes.

THE COURT: Let me explain to the ladies and gentlemen what a deposition is, because I do not know if they understand.

Under the rules of the federal courts, and most other courts, too, in a case being prepared for trial the parties on either side have the right to take the sworn testimony of witnesses before the trial to get ready for the trial, and when that is done the testimony is taken, as it is here in court, before a reporter, and it is transcribed. It is known as a deposition.

Mr. Bellows' deposition apparently was taken at an

You said, "Approximately two o'clock in the afternoon, maybe before" --

THE COURT: The transcript says that.

A I said maybe before.

Q But you are not too accurate about what time?

MR. ROSEN: May I respectfully suggest on page 5 he explains it around 12 o'clock. To show him part of the transcript is not fair.

THE COURT: Just give me a chance, Mr. Rosen.

MR. ROSEN: Four and five of the record, sir.

THE COURT: Do you want to read the remainder of that on page 5?

MR. ROSEN: Yes.

MR. GREENWALD: I mean, that's --

MR. ROSEN: He says he went there about noon.

THE COURT: I will read to the jury the testimony on the subject at the deposition. It starts at the bottom of page 4.

"Q Do you recall what times during the day this carnival was taking place.

"A Approximately two o'clock in the afternoon, maybe before. I think it was around two it opened.

"Q And about what time did it go to?

"A One o'clock or two o'clock in the morning.

"Q Were alcoholic beverages available at this carnival?

"A Yes.

"Q Now, on that day do you recall if you attended this firemen's carnival?

"A Yes, I did.

"Q At about what time did you attend this carnival?

"A Approximately 12 o'clock.

"Q You just testified that the carnival started about two o'clock.

"A It's an open fair, it's an open type of thing held in the field, and you could go there any time."

I think that covers the subject.

MR. GREENWALD: Okay.

Q At the carnival, how many beers did you have this first time?

A Several.

Q Several?

THE COURT: What do you mean by "several"? Give us a range.

A Say four or five.

Q Do you recall your statement that you gave on July, I believe, 17, 1972 --

THE COURT: Gentlemen, we cannot have two lawyers

trying the case.

Q -- Exhibit 1 in evidence, where you stated you had about six beers?

A I don't recall that.

Q You do not recall. If I read to you --

THE COURT: Show it to him. You do not have to read it to him.

Does that refresh your recollection that you said on the 17th of July that you had six beers?

MR. ROSEN: What page is that?

MR. GREENWALD: It is the statement you have.

THE COURT: Exhibit 1.

THE WITNESS: Six?

THE COURT: Does that refresh your recollection?

THE WITNESS: Yes, sir.

THE COURT: Now do you think you had six beers?

THE WITNESS: Yes.

Q You stated previously that you left the carnival around what time?

THE COURT: Would you return to your post, Mr. Greenwald.

Q You stated you left, but before you left -- or, let me get back.

Do you also recall that I asked you at the time

you went to the carnival this first time -- this was in the deposition, page 6 -- I asked you a question:

"Q How many beers did you drink?"

And do you recall your answer: "In the course of time I was there, I would say I might have had eight, nine"?

MR. ROSEN: That is not what he said, sir.

MR. GREENWALD: That is his answer.

THE COURT: Yes, it is.

MR. ROSEN: He said, "I might have had."

THE COURT: That is what was read.

MR. ROSEN: Oh.

THE COURT: Here, you can follow the questions from that.

Do you remember those questions and those answers at your deposition at the top of the page?

THE WITNESS: Yes, sir.

THE COURT: All right. He said "yes."

Q So are you aware -- could it have been more?

A No.

Q Why couldn't it have been?

A Why couldn't it have been what?

Q You do not seem to be too sure about how many beers you had been drinking.

A I don't carry a scoreboard with me.

Q You like to drink beer, though?

A Oh, sure.

Q Okay.

THE COURT: What period of time were you referring to when you were talking about the beers that you had described there?

THE WITNESS: About a three-hour period.

THE COURT: From when to when?

THE WITNESS: From around noon to 2 or 2:15, something about that.

THE COURT: That would be a two-hour period, not a three-hour period?

THE WITNESS: Yes.

Q You then left the carnival?

A Yes.

Q Where did you go to?

A Art's Blue Room.

Q About what time?

A Around two o'clock.

Q Directly to Art's Blue Room?

A Yes.

Q What is Art's Blue Room?

A It's a tavern.

Q Do you have any special relationship with Art's

Blue Room?

A I was employed there at the time.

Q How were you employed? What were you employed as?

A Bartender.

Q Bartender.

THE COURT: Were you reporting for duty or were you just going there --

THE WITNESS: No, it was my day off.

Q Once again, did you have some alcoholic beverages over there?

A Yes, sir.

Q How many did you say you had? How many beers or other types of alcoholic beverages at Art's Blue Room?

A At Art's Blue Room? I might have had six.

Q Six.

THE COURT: Six beers?

THE WITNESS: Yes.

Q What size were those beers?

A Seven-ounce.

Q Seven-ounce.

Once again, if I can come up, do you recall giving a statement where you said --

THE COURT: Is that Exhibit 1?

Q -- Exhibit 1, once again: "Went inside the Blue

Room, stayed till 6 p. m., during which time I drank about 12 draft beers"?

THE COURT: Show it to him.

Q Is that your statement?

A Yes.

THE COURT: Is that correct, what you said?

THE WITNESS: Yes, sir.

THE COURT: Okay.

Q It might have been more?

A It might have been less.

Q But you do not really know?

A Yes, I do. It wasn't any more.

Q What makes you so positive? You do not seem to be too sure about anything here.

THE COURT: Let us not have comments. You can tell the jury what you think, Mr. Greenwald.

MR. GREENWALD: Okay.

Q By the way, Art's Blue Room served besides beer what type of other alcoholic beverages?

A Yes, sir.

Q The full range?

A Yes.

Q It was a licensed bar?

A Yes.

Q You could have had some regular alcoholic beverages

THE COURT: Never mind he could have had.

MR. GREENWALD: Okay.

Q Then, what did you -- you left Art's Blue Room?

A Yes.

Q After this.

And you stayed -- did you then -- did there come a time when you went back to the carnival?

A Yes.

Q What time was that?

A Around 9:30.

Q How long did you stay there?

A Till around 11.

Q What did you do then?

A Went home.

THE COURT: Did you have any beer at night at the carnival?

THE WITNESS: Yes, sir.

THE COURT: How much have we got there so we can get it all out on the table?

THE WITNESS: I don't recall.

Q If I could read once again fromyour statement, if I could come up again and show you.

MR. ROSEN: What page, sir?

MR. GREENWALD: This is Exhibit 1.

THE COURT: Exhibit 1 again.

Q "When I went back to the carnival, drank some more beer, about 6 drafts."

THE COURT: Does that sound right?

THE WITNESS: Yes.

THE COURT: Okay.

Q You said you went home. You did not stop or pause at a corner where there was a telephone booth?

A Excuse me?

Q On the way home from the carnival.

A On the way home from the carnival? No.

Q You did not pause, you were not at a corner, I think of Main and Pearl, or a telephone booth?

A No, sir.

Q No?

A Which time do you mean now?

Q When you were going home from the carnival.

THE COURT: You mean at 11 o'clock at night?

MR. GREENWALD: Yes.

A Yes, I did pause.

THE COURT: Yes, he did, he says.

Q You did pause?

A Yes, sir.

Q I believe you previously testified you did not pause.

THE COURT: When?

Q On direct examination.

THE COURT: I do not know that he was asked.

MR. GREENWALD: I believe he was asked where did he go to from the carnival.

THE COURT: What happened at the pause, whatever the pause is?

THE WITNESS: The fellow I knew there was banging on the telephone booth. That's all I know about it.

THE COURT: What did you do?

THE WITNESS: I stood there, and before I could do anything the local police pulled up and took him away.

THE COURT: How long were you there?

THE WITNESS: Ten, 15 minutes.

THE COURT: That long?

THE WITNESS: Yes.

Q Who was it? Was it a friend of yours that had been taken away by the local police, not the state police?

A I knew him. He was an acquaintance.

THE COURT: What was his name?

THE WITNESS: Edward Johansen.

Q You say he was an acquaintance. Did you have any-

thing to do with him at that time?

A What do you mean?

Q Did you meet with him to go to a phone booth?

THE COURT: Before?

Q When he got -- he left the carnival, and he was at the phone booth on the corner of, if I might state -- I think it has been testified -- Main and Pearl Street.

A Yes, sir.

Q Did you have anything to do with Eddie Johansen?

A No, sir, the police took him away before I could say a word to him.

Q The police took him away.

If I may once again show your statement, Exhibit 1, where you stated --

THE COURT: Never mind what he stated. Just show it to him and ask him.

Q "I started walking downtown, met Eddie Johansen, who was pretty well loaded, and we walked to the phone booth by the bridge, and when we got there Eddie started raising a ruckus with the kid in the booth known to me as Homer Salsbury from Liberty. The Town of Rockland Police Department came along and took Eddie away in the police car."

A That's just what I told him.

Q I think the jury can --

THE COURT: Never mind what the jury can.

Is that correct, what was just said?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q So you did have something to do with Eddie Johansen?

MR. ROSEN: I object to the form of the question.

THE COURT: Sustained. Let the jury draw its own conclusions, and you can argue to the jury later on. He said what you read is correct.

MR. GREENWALD: Okay.

Q So I ask once again, were you with Eddie Johansen?

THE COURT: He said five times he was with him. He just verified what you asked him.

Q What was Eddie Johansen doing?

A What was he doing? He was banging on this telephone booth that this kid was inside the phone booth.

THE COURT: That was Homer?

THE WITNESS: Yes.

THE COURT: It was not the defendants in this case who arrested Johansen, was it?

THE WITNESS: No, sir.

Q At this place, the phone booth or on the sidewalk, did you come into contact with any of the defendants, the

state troopers?

THE COURT: There are only two defendants.

Q Either Van Houten or Dainack?

A At that time?

THE COURT: Yes, at that time.

Is that what you are asking?

MR. GREENWALD: Yes.

A At the time of the telephone booth incident?

THE COURT: Yes.

A Yes. I didn't know who they were at the time.

Q You had some contact with them?

A Well, they pulled up there and said something to somebody that was there on the corner.

THE COURT: Did they say anything to you?

THE WITNESS: No, not at that time.

THE COURT: You observed them; is that right?

THE WITNESS: More or less.

THE COURT: What happened? Did you speak to them or not?

THE WITNESS: I don't remember whether I did or not at that time.

Q At that time. At this time.

Once again, Exhibit 1, if I show you and read, once again, this was after Eddie Johansen has been taken away

by the town police.

"I sat down by the car and soon the troopers came along. This was about 11:30 p. m. Trooper Dainac motioned to me to come to the car, which I did. He asked me to show him identification.

"I told him I didn't have to show him identificatio I wasn't under arrest, hadn't done anything wrong, and made a wise crack to him about the muffler on his troop car and walked away, went home, and told my wife about the cops dragging Eddie away."

THE COURT: Do you want to know if that is correct?

MR. GREENWALD: Yes. I would like to know if that is correct.

Q Yes.

MR. ROSEN: May I ask the materiality of that? He just said that. He went over to the curb and they pushed him in the car.

THE COURT: No, this is a different place and time, as I understand it.

This was at the phone booth before you were accosted at your stoop or steps.

MR. GREENWALD: Yes, totally different place and time.

Q So you did say something to the police?

A Yes.

THE COURT: Do not keep repeating. He said yes.

MR. GREENWALD: Okay.

Q You testified now how long were you at the phone booth or the sidewalk?

A A few moments, maybe ten minutes.

Q Yes. These were the troopers who came over, and you said this to them at the phone booth?

A Yes, I believe it was them. I'm not sure.

Q They knew you, at least your appearance, at that time?

A Yes.

Q They had seen you then?

A I don't know if it was the same two.

THE COURT: Well now, wait a minute. You are terribly casual about the answers, and it is important. Were they or were they not or do you or don't you know?

THE WITNESS: I don't know if it's the same two I met by the phone booth.

THE COURT: You just do not know?

THE WITNESS: No.

THE COURT: All right. So there were two troopers and you do not know if it was these two?

THE WITNESS: Right.

Q You have testified you then walked home to your house?

A Yes.

Q Went upstairs?

A Yes.

Q About what time did you come downstairs?

A About 11:30.

MR. GREENWALD: Once again, I hate to be repetitious reading this statement he previously made, but he said at 11:30 he was -- to read once again --

THE COURT: If you think it makes a difference as to what particular time it was.

MR. GREENWALD: I do think we want to get the time factors.

THE COURT: Then go ahead and read it. Do not make a speech. Just bring it to his attention.

Q I read to you, and this is repetitious:

"Q This was about 11 p. m. Trooper Dainack motioned to me to come to the car."

And this is what I read to you at the --

THE COURT: What time does he say the rest of it took place? Why don't you read that?

MR. GREENWALD: Okay.

Q That is correct, that was at the phone booth?

MR. ROSEN: No, it was not. Read the statement.

THE COURT: Wait a minute.

MR. GREENWALD: It was.

MR. ROSEN: I object. The statement has clearly two different times. One is 11 and one is 11:30. Just above where he was reading.

THE COURT: The beginning of the third paragraph says;

"This was about 11:30 p. m. Trooper Dainack motioned me to come to the car, which I did. He asked me to show him identification. And I told him that I didn't have to show him identification, I wasn't under arrest, hadn't done anything wrong. I made a wise crack to him about the muffler on his troop car and walked away, went home."

That was the first incident which took place at the phone booth; is that correct?

THE WITNESS: Correct.

THE COURT: Okay.

MR. GREENWALD: I can leave a copy with your Honor.

THE COURT: Give the witness one, too. You don't have to have all this walking back and forth.

Is it correct that occurred about 11:30?

THE WITNESS: Yes.

THE COURT: Can you tell us about when the troopers came to your home when you were sitting downstairs?

THE WITNESS: It wasn't too much later.

THE COURT: About how much later would you estimate

THE WITNESS: 15, 20 minutes.

THE COURT: All right. So then it would be about 11:45; is that right?

THE WITNESS: Yes.

THE COURT: All right. We have got it straightened out. It was 11:45 when he came downstairs.

MR. GREENWALD: Okay.

Q By the way, let me just ask you about your residence or your house. Is it a single-family house?

A No. It was a commercial-type building downstairs and it was two apartments upstairs.

Q Oh, so this was the main business street of Livingston Manor?

A Yes.

Q And you lived -- where did you live in this building?

A I lived in one of the apartments in the building.

Q Upstairs?

A Yes.

Q So this was not the typical single-family type

residence neighborhood, it was like what we normally call -- like a taxpayer with apartments above the stores?

A Yes.

MR. ROSEN: I must object to the form and materiality of this question. He lived in an apartment.

THE COURT: There may be some materiality, I understand, but the form is a little clumsy.

There was a business establishment downstairs; is that right?

THE WITNESS: That's right, and apartments upstairs.

Q Who were you sitting with?

A David Miller and William Welch.

Q You testified that -- you previously testified they came by?

THE COURT: Meaning who?

Q The state police came by?

A That the state police came by?

Q Yes.

A Yes.

Q What time do you say this happened?

A Around 11:45, approximately.

Q You mean as soon as you came downstairs the state police came by?

A I wasn't there very long.

Q What was -- did they or any of the defendants say anything to you?

A Yes.

Q What did they say?

A They motioned for me to come to the car, which I did. He asked me for identification.

THE COURT: Which one asked for identification?

THE WITNESS: Officer Dainack.

Q Did you show him any identification?

A I told him who I was.

Q How did you tell him who you were?

A I told him my name.

Q Did you tell him where you lived?

A I don't think he asked where I lived.

Q So it is your testimony you did not -- you were not asked.

Now, did you produce any I.D., like a driver's license or --

A No, sir.

Q You have a driver's license?

A Yes.

Q You had other types of identification, too, didn't you?

A Yes.

Q You did not produce it, right?

A I don't know if I had them with me.

Q You got into the -- excuse me.

This is what you said -- this is what you said to the state police. What did they say to you?

A They said, "Get in the car."

Q And you got in the car?

A No, they put me in the car.

Q Well, is it your claim they did anything -- excuse me. I withdraw that.

Precisely what do you mean by "put"?

A Put? One of them held the door open, and the other one pushed my arm behind my back and forced me into the back seat of the police car.

Q But which arm, by the way? Which arm did he twist behind your back?

A I don't remember.

THE COURT: You are sure it was one of the two, though; is that it?

THE WITNESS: Yes.

Q Once again, you have Exhibit 1 here. You simply stated --

THE COURT: Do you not use the word "simply."

MR. GREENWALD: Excuse me.

Q You stated on this, in the second paragraph:

"Q Then the other trooper came around and helped Dainack put me in the back seat of the troop car."

THE COURT: Are you asking him something or telling him?

MR. GREENWALD: I am asking whether he stated that in the statement.

THE COURT: That is in evidence.

MR. GREENWALD: I understand.

THE COURT: You can ask him if it is the truth, but you cannot ask him if he stated it.

A Yes.

Q You did not state anything about your arm being twisted or --

THE COURT: In this statement?

Q -- in this statement about force being applied?

THE COURT: Did you? I guess he is asking you a question.

MR. GREENWALD: Yes.

THE COURT: It speaks for itself, Mr. Greenwald.

MR. GREENWALD: Yes, I understand that, but --

THE COURT: I know you understand it. Therefore, there is no point. Just say it does not if it does not.

THE WITNESS: In the statement I said they helped me.

MR. ROSEN: He told them they put him into the back of the car. He did not go into all the descriptions.

THE COURT: You can argue, both of you, to the jury as to what the significance of the material in this statement is, or what the significance of the omissions is. But whatever it is, it is. And it is not going to be changed by asking questions of the witness.

Q Let me ask you, was your recollection better then than it is now?

A Of course.

Q As you went into the car, did you say anything to your friends?

A Yes.

Q What did you say to them?

A I asked Mr. Miller to call my attorney, Mr. Rosen.

Q So, in effect, you had asked for legal assistance as soon as you -- excuse me. I withdraw that.

You had legal assistance on the way?

A Apparently.

Q By the way, did your friends, Miller or -- Mr. Miller or Mr. Welch do anything at this time, or did they say anything to the police?

A No.

Q They said nothing to the police?

A Not that I know of.

Q Not that you know of.

Let me ask you, you are in the troop car. Where were you in thattroop car?

A The back seat.

Q Was anyone sitting with you in the back seat?

A No, sir.

Q Were you frisked?

A No, sir.

Q Were you patted down?

A No.

Q Where were the two troopers?

A In the front seat.

Q The front seat.

You had complete freedom of movement in that back seat?

A Yes.

Q You could move from left to the right?

A Yes, but I couldn't get out.

Q Let me ask you why you could not get out.

A There's no door handles on the inside.

Q There are no door handles on the inside.

It is your testimony that there are no door handles

A I don't think there was any.

Q You do not think. You do not know. You did not try to get out?

A It's kind of hard getting out of a car when it's moving.

Q Let me ask, you testified that -- excuse me.

Didn't the car stop at one point?

A Yes.

Q So it was stopped at one point, it was not moving all the time. Okay.

Now, who was driving? Which trooper, which defendant, was driving?

A Officer Van Houten was driving.

Q Who was in the passenger's side?

A Officer Dainack.

Q Dainack.

And you were sitting behind --

A Mr. Dainack.

Q Dainack.

Let us just review once again your testimony, previous testimony.

What street did you go down?

A Pearl Street.

Q How long do you think you were in the car?

A Approximately 15 minutes.

Q You did not have a watch, though?

A No.

Q You did not look at a clock at any point?

A No.

Q How long do you think -- the distance you went in this car?

A Two miles, two and a half miles.

Q Was there any traffic around?

A Not at that time.

Q Do you have any recollection of what speed the car was going at?

A Around 40 miles an hour, approximately

Q How long do you think it would take -- okay.

THE COURT: Never mind how long he things it would take.

Q You have testified and shown that Trooper Dainack knelt over the back seat of the car.

A That's right.

Q And administered a blow to your ribs?

A Yes.

Q I would like to have, you know, perhaps a little demonstration here. If you could stand up, or perhaps, let's

see. Maybe you could sit down here.

Now, you are sitting down. You were completely unrestrained?

A Yes, sir.

THE COURT: Is he supposed to be acting as himself at the moment?

MR. GREENWALD: Yes, yes, yes.

If I can participate physically in this --

THE COURT: Careful, you will start another lawsuit.

MR. GREENWALD: I am a very gentle person.

Q Actually, I guess I should indicate, of course, the car was moving and the trooper was kneeling?

A Yes.

Q He grabbed you with what hand?

A I believe it was his right.

Q With his right hand. You say he pulled you up?

A Yes.

Q Like this, kneeling in the car, moving, and gave a blow this way over the back seat?

A Yes.

Q And that was it?

A That was it.

THE COURT: May he resume the stand now?

MR. GREENWALD: Yes, I think he could resume the

stand.

Q The car, you stated, was going at 40 miles an hour?

A Yes, approximately.

THE COURT: Would you return now to your desk?

Q Did he say anything to you?

A Not that I recall.

Q Once again, Exhibit 1. You said there that he told you something about mouthing off about the muffler?

A Yes, that's correct.

Q But now you say he did not say anything.

THE COURT: Do you now recall whether he said that or not?

THE WITNESS: Yes, he did.

Q Did anything else happen in the car?

A No.

Q How many minutes were you in the car when this alleged blow came?

A How long had I been in the car?

Q How long had you been in?

A Not even probably two minutes.

Q Two minutes.

How long after were you let off?

A Ten minutes.

Q What happened in that ten minutes?

A I asked what they were doing, why they was taking me, if I wasn't under arrest.

Q Did you complain to them about this alleged assault told them --

A I didn't to them. I didn't think there was much use of that.

Q Now, let's see. Where were you left off?

A In front of the Sullivan County National Bank.

Q How far away was that from where you had been picked up?

A About two blocks.

Q You just walked home?

A Yes.

Q You did not need any assistance?

A No.

Q Perfectly capable of getting home yourself?

A Yes.

Q At this time did Trooper Dainack touch you in any way, or Trooper Van Houten?

THE COURT: What time?

Q At this time, when you were left off, out of the car.

THE COURT: I understood him to say the only time

he was assaulted was in the car.

Is that right?

THE WITNESS: Yes.

Q By the way, you did say you went to -- you said you just came home, and that was --

MR. GREENWALD: No further questions. That is it.

THE COURT: Is that it?

MR. GREENWALD: Yes.

THE COURT: Ladies and gentlemen, we will take a luncheon recess at this time. Normally we get back together at 2 o'clock, but I have another case that will take a few minutes at that time.

I would, however, ask you to be back in the jury-room at 2 o'clock so that you will be ready to go as soon as I am free.

And I ask counsel and witnesses also to be here at 2 o'clock.

(Luncheon recess.)

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AFTERNOON SESSION

2 P. M.

(Jury present.)

V I N C E N T J. B E L L O W S, resumed.

THE COURT: Mr. Rosen, do you have any further questions of Mr. Bellows?

MR. ROSEN: Yes, sir.

REDIRECT EXAMINATION

BY MR. ROSEN:

Q Mr. Bellows, in answer to a question this morning on cross-examination you answered that you were pulled by the officer with his right hand; do you recall that answer?

A Yes.

THE COURT: We are talking about when you were inside the car, you mean?

MR. ROSEN: When he was inside the car.

Q Do you remember giving that answer?

A Yes, sir.

Q In the statement that you gave to the police on July --

THE COURT: 17th. I remember. It is my birthday.

Q -- July 17, 1972, you had indicated that he struck you with his right hand, which contradicts your statement this morning that he held you with his right hand.

Now, which is the correct statement of what occurred?

A He pulled me with his left hand and struck me with his right hand.

Q Did you mean to say this morning that he struck you with his right hand?

A Yes.

Q Some questions were asked showing a difference in the number of glasses of beer that you had or cups of beer that you had. In the one place you said you had six cups, and in another place you said you may have had eight or nine. Were those estimates or actual count?

A That was an estimate.

Q Did you keep track of each and every cup of beer?

A No.

Q Did you at any time during that day drink or imbibe hard liquor?

A No.

THE COURT: Can I ask you about the size of the cups? We do not have every kind of cup in the courtroom, but here is a cup.

THE WITNESS: That's about the size of it.

THE COURT: Why don't we put this in evidence, if you say this is about the size.

state police, who are the defendants in this case, released you at the bank to the time when you telephoned to the state police barracks at Ferndale making your complaint?

A Half an hour.

Q Did you describe there what happened?

A Yes.

Q How much later and what date, if you can recall, did Lieutenant Minihan, of the New York State Police, come to investigate?

A I believe it was the next day.

Q What time the next day?

A It was in the morning, about 10 o'clock.

Q Did he type up Plaintiff's Exhibit 1? That is the statement.

A No.

Q Who did?

A Investigator Lenihan.

Q I beg your pardon?

A Lenihan typed it.

Q Is he another police officer there?

A Yes.

Q Did they bring the statement out and you read it over and signed it?

A Yes.

Q Some questions were asked of you on the examination before trial with reference to whether or not you had been to see a doctor, right?

A Yes.

Q You said you went to see Dr. D'Amico?

A Yes.

Q At that examination before trial, the defendants marked Dr. D'Amico's statement as their Exhibit A for identification, did they not?

A Yes.

MR. ROSEN: I would at this time, in view of that interrogation on the examination, the deposition, and their marking as this exhibit, offer it as Plaintiff's Exhibit.

MR. GREENWALD: Objection.

THE COURT: I do not know that it is objectionable on its merits, but I do not think just because it was offered as an exhibit at a deposition makes it competent evidence here.

For what purpose are you offering it?

MR. ROSEN: There was a question asked --

THE COURT: Please do not refer to the deposition. Just tell me what the purpose of offering it for in the trial is.

MR. ROSEN: To fix and determine that he did go to

a doctor immediately. He went that night.

THE COURT: There is really no foundation for that document at the present time. I do not think --

MR. ROSEN: He testified also that he did go.

THE COURT: All right. That testimony stands. I think the objection is sustained for the time being, at least.

MR. ROSEN: May I respectfully mark this as Plaintiff's Exhibit 2 for identification.

THE COURT: You may.

XXX (Plaintiff's Exhibit 2 marked for identification.)

MR. ROSEN: That is all we have of this witness.

THE COURT: Thank you.

Do you have any further questions?

MR. GREENWALD: Yes.

RECROSS-EXAMINATION

BY MR. GREENWALD:

Q Just to clarify, and you may have testified to this before, but did you know any of the defendants before this incident?

A No.

MR. GREENWALD: I have no further questions.

THE COURT: Thank you, Mr. Bellows.

(Witness excused.)

DAVID MILLER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSEN:

Q What is your address?

A DeBruce Road, Livingston Manor, New York.

Q On July 16, 1972, where were you sitting at the time when the state police took Vincent Bellows away?

A On the stoop in front of Will Brothers Hardware on Main Street.

THE COURT: Is that the building in which Mr. Bellows lived?

THE WITNESS: Yes, it is.

Q Did you see the police car drive up?

A Yes, sir.

Q What was Mr. Bellows doing at the moment when they drove up?

A He was just sitting there talking.

Q Did you hear the police call for him?

A Yes, sir.

Q What did they say?

A They said -- I believe they called him, "Bellows, come here."

Q Did he go over there?

A Yes.

Q How long after he went over there did you see them do anything with Bellows?

A It was a matter of seconds.

Q What did they do?

A I couldn't hear the whole thing. I believed --

Q Now we are up to the point of seeing what they did.

THE COURT: What did you see them do?

Q What did you see?

A Well, I saw -- I didn't know who was who, but I saw one of them jump out of the car, open the backdoor, and I saw the other one jump out of the car and one of them twisted his arm up behind his back and threw him in the back seat.

Q And they drove off? Did you see them drive off?

A Yes, I saw them drive off.

Q Was Bellows in the car after the closed the doors?

A Yes.

Q That left you in the street, didn't it?

A Yes.

Q Did you hear Bellows shout that you should do something?

A Yes, sir.

Q What did he shout?

A "Call Mr. Rosen."

Q And you did, didn't you?

A Yes.

Q That is, you called me?

A Yes.

Q Did you tell me briefly what had occurred?

A Yes.

MR. ROSEN: That is all. Your witness.

CROSS-EXAMINATION

BY MR. GREENWALD:

Q Mr. Miller, what were you doing on this date, July 16, 1972, say starting at about 9 o'clock? Do you recall what you were doing on this date, July 16, that you just testified about?

A In the evening?

Q Yes, in the evening.

THE COURT: I thought you said 9 in the evening.

MR. GREENWALD: Yes, 9 p. m., in the evening.

A I don't recall.

Q Do you recall giving a statement to the New York State Police the next day?

THE COURT: If you are going to refer to it,

would you have it marked for identification, please.

MR. GREENWALD: Yes, yes.

XXX (Defendants' Exhibit A marked for identification.)

Q Do you recall giving a statement?

A Yes, sir.

THE COURT: Let me give you back the actual exhibit.

MR. GREENWALD: I will leave a copy with you because I think we are going to be working with this.

THE COURT: Thank you.

MR. ROSEN. We have no copy of that, your Honor.

THE COURT: Would you furnish the plaintiff a copy of it?

MR. GREENWALD: Yes. Just a second.

At this time I will furnish this copy. I have another.

MR. ROSEN: Thank you.

Q I show you this Defendants' Exhibit A for identification. I ask you also, is this your signature?

A Yes.

THE COURT: Let us get this into evidence. Have you seen this statement before?

THE WITNESS: Yes, I believe I read it right after I made it.

THE COURT: Did you type it?

THE WITNESS: No, sir, I didn't type it.

THE COURT: First of all, you have seen it before?

THE WITNESS: Yes.

THE COURT: You have seen the original of it, that is?

THE WITNESS: Yes.

THE COURT: And signed it?

THE WITNESS: Yes.

THE COURT: Will you tell us the circumstances under which it was prepared and you signed it.

THE WITNESS: An investigator, I believe from Kingston, came to where I worked and picked me up and took me to the Ferndale Barracks, and took my statement.

Another state trooper, I don't know if he was an investigator or what he was, he typed up the statement as I was making it.

THE COURT: Would that have been Lieutenant Minihan, or do you remember the name?

THE WITNESS: I don't remember who was typing it up. I believe Lieutenant Minihan was the investigator from Kingston.

THE COURT: I see. When you read it and signed it, did you believe it to be true, its contents?

THE WITNESS: Yes.

THE COURT: All right.

Do you want to offer it in evidence?

MR. GREENWALD: Yes, I would like to offer it.

THE COURT: Any objection?

MR. ROSEN: I have not had a chance to read it. I am just reading it.

THE COURT: Have you seen it before?

MR. ROSEN: Never.

THE COURT: Would you look through it and see if you have any objection?

MR. ROSEN: I have no objection.

THE COURT: Thank you.

XXX (Defendants' Exhibit A received in evidence.)

MR. ROSEN: Of course, it is being limited to the question of cross-examination of the witness and not as affirmative evidence binding upon the plaintiff.

THE COURT: All right.

MR. ROSEN: That is as far as my consent goes.

THE COURT: It is allowed in evidence for the purposes of cross-examination of the witness.

Q Do you now recall what you were doing at around 9 p. m. on July 16, 1972?

A I believe I was at the carnival.

Q What were you doing at the carnival?

A I don't know, having a few beers, doing what everybody was doing, I guess.

Q Do you recall when you left?

A Not exactly.

Q Do you remember where you went?

THE COURT: Can you approximate about what time you left?

THE WITNESS: I think I stayed there for a couple of hours.

THE COURT: Starting when?

THE WITNESS: From around 9, maybe 8:30.

THE COURT: Okay.

Q Do you remember where you went to when you left the carnival?

A I walked down Main Street.

Q Did you end up at any particular place?

A At what point?

Q Well, if I could -- perhaps this Defendant's Exhibit A will refresh your recollection -- if I could read here --

THE COURT: Do not read. If you want to refresh his recollection, let him read it.

MR. GREENWALD: Okay. I will let him read it.

THE COURT: What is it you wanted to know?

MR. GREENWALD: I have asked him, you know, what time he left the carnival and where did he go.

THE COURT: Yes. What was the pending question?

MR. GREENWALD: I think basically that is the pending question.

THE COURT: Does that refresh your recollection as to where you went after you left the carnival?

THE WITNESS: Yes.

THE COURT: Could you tell us where you did go now that your recollection has been refreshed?

THE WITNESS: Down on Main Street by the phone booth.

Q At what time?

A It was around 11.

Q When did you first meet at this time the plaintiff, Vincent Bellows?

A It was around that same time.

Q Do you recall where you ended up on Main Street, at what particular location?

A By that phone booth.

THE COURT: The one that Mr. Bellows testified about, you mean?

THE WITNESS: Yes.

Q What was going on at that phone booth when you got there?

A Well, there was a hassle going on between two people.

THE COURT: Tell us --

MR. ROSEN: It is hard to hear him.

THE COURT: Tellus what literally was happening, do not just say "hassle."

THE WITNESS: Well, Eddie Johansen was hassling with this guy Homer Salsbury,

THE COURT: What do you mean by "hassling"?

THE WITNESS: I think he wanted to pick a fight.

THE COURT: What was he doing? Not what you think.

THE WITNESS: He was shouting at him and stuff.

THE COURT: He was shouting at him. Were they in physical contact with each other?

THE WITNESS: No.

THE COURT: Okay.

Q Who was shouting at who?

A Eddie was shouting at Homer.

THE COURT: Mr. Greenwald, do you mind standing back there, please?

MR. ROSEN: Louder, Mr. Miller. The jury cannot

hear you.

THE WITNESS: Okay.

Q Did Vincent Bellows then join this "hassle"?

A He was there.

Q He was there?

A Yes.

Q Did Vincent with Eddie argue with Homer? Was he mad at Homer?

THE COURT: I will sustain an objection as to whether he was mad at Homer. You can ask him what he did.

MR. GREENWALD: Excuse me.

THE COURT: It seems so simple. Why don't you just ask him what he did?

Q What did he do?

THE COURT: And stay back.

Q What did plaintiff do?

A At what time?

Q At this time, with Eddie Johansen and Homer Salsbury.

THE COURT: Mr. Miller, just tell us what happened. You just finished reading your own statement.

A After Eddie was taken away or before?

THE COURT: Go right through the whole thing.

Q Before, during, after.

THE COURT: Go through the whole thing from beginning to end.

A All right. Vince come down. They were hassling, like I said, shouting back and forth to each other.

The town police finally had come and taken Eddie away. And Vince had a few words with Homer.

The next thing I knew the police car came up, came along.

THE COURT: You are still at the telephone booth?

THE WITNESS: Yes.

THE COURT: What happened there?

First of all, do you know who was in the police car?

THE WITNESS: No, I don't.

THE COURT: You are not saying it was Mr. Dainack and Mr. Van Houten?

THE WITNESS: No, I wouldn't be sure.

THE COURT: And you are not saying it was not?

THE WITNESS: I'm not saying it wasn't, either.

THE COURT: So the state troopers came. What happened then?

THE WITNESS: I really don't know, because I left.

THE COURT: Hold it a minute. In your statement you say, "At about 11:30 p. m. I saw a black and white state

police car with a light on top drive up to the bridge. Homer came out of the booth and told the trooper on the passenger's side that two guys were hassling him. At this time I decided it was time to go for my last beer at the carnival."

THE WITNESS: Yes.

THE COURT: Is it correct that Homer came out?

THE WITNESS: Yes.

THE COURT: And told that to the police?

THE WITNESS: He came over and spoke to the police. I don't know if I should have made that statement. He came over and spoke to the police. I assumed that's what he was --

THE COURT: Are you saying when you said in your statement that he told the trooper on the passenger's side that two guys were hassling him, that you just assumed that and you do not know it?

THE WITNESS: I assumed that's what he was talking to him about. He come over and talked to the trooper.

THE COURT: Did you hear what he said to the trooper?

THE WITNESS: No.

THE COURT: So that what you said there is an assumption; is that correct?

THE WITNESS: Yes.

THE COURT: You do not know what he said?

THE WITNESS: No.

THE COURT: All right. And you left there and went back to the carnival?

THE WITNESS: Yes, sir.

THE COURT: What did you do next?

MR. GREENWALD: If I could, I want to go back a little bit.

THE COURT: All right.

Q You saw Vincent Bellows at the phone booth. How did he appear to you?

A He looked like he had a few beers.

THE COURT: Could you tell us what you mean by that? You can have a few beers and it does not make any difference, and you can have a few beers and it does make a difference.

Did he look normal or any different from normal?

THE WITNESS: A little different. He didn't look drunk.

Q If I can once again refresh your recollection, you said it was noticeable -- basically in your statement -- noticeable that Vincent had been drinking. Let me ask from what you saw.

A I was right next to him. I could smell.

Q Furthermore, when this hassling, whatever it was, was going on, where did Homer go ultimately before the police came?

A He was in the phone booth.

Q What did he do in the phone booth? Or, what did you see him do?

A He made a phone call.

Q What else did he do? Did he have his foot in any position?

A He had his foot against the door, yes.

Q From what you could see, did that prevent the door from being open?

A Yes, it wouldn't open that way.

Q Was there -- I think your previous testimony -- there was some banging going on on the door at this time?

THE COURT: Did you hear the question?

A I believe Eddie was banging on the door. I believe Eddie was.

Q Did you state, once again to refresh your recollection, that Vince had been drinking and it was noticeable? He would not let Homer out of the booth?

A Yes.

Q That was Vincent Bellows who had not let Homer out of the booth, was forcing him to stay in the booth?

THE COURT: Is that a question?

MR. GREENWALD: Yes, that is a question.

MR. ROSEN: I must object to the form, sir.

THE COURT: Did Vincent continue to keep Homer in the booth?

THE WITNESS: He didn't force him to stay in the booth.

THE COURT: What did you mean when you said in your statement, "He wouldn't let Homer out of the booth"?

THE WITNESS: Well, I don't remember exactly what he said, but he said a few things to Homer, and Homer didn't want to come out of the booth.

THE COURT: Is that what you meant when you said Vince kept Homer in the booth, or would not let him out? It is your statement. What did you mean when you said it?

THE WITNESS: Yes. Well, he had his foot up against -- he didn't want to come out of the booth, and I guess Vince was prompting him along not to come out of the booth.

THE COURT: In what way was he prompting him?

THE WITNESS: Saying things to him.

THE COURT: Like that?

THE WITNESS: I don't recall exactly what.

THE COURT: He did not say, "Come on out and I'll give you a million dollars," did he?

THE WITNESS: No.

THE COURT: Can you remember the substance of what he said or the nature of what he said?

THE WITNESS: I don't really recall exactly what it was.

THE COURT: All right.

Q Did you say anything to Homer when he was in the booth or when he came out of the booth?

A I don't believe I did.

Q Would it refresh your recollection if you look at your statement: "I said to Homer that that wasn't a very good thing to do"?

A Yes. Yes. That's --

Q What was not a very good thing to do?

A I just believe that he called the police on Eddie for no good reason.

Q What about Vincent Bellows?

A He called the police on Vince?

Q You said he called him on Eddie. Were the town police there at this time?

A No. I believe that Homer called the town police on Eddie.

Q And Vince was with him, with Eddie?

A Vince arrived after.

Q Well, your statement -- I don't want to have to read it again -- would indicate you stated that "Eddie, Vince and Homer were basically all together."

THE COURT: I think you are starting in the middle of things.

MR. GREENWALD: Yes.

THE COURT: It says, "About 9 p. m. on July 16, 1972, I went down to the carnival being held at the firehouse on Main Street in Livingston Manor. I had a couple of beers and some hotdogs and other things to eat.

"I left around 11 p. m. and walked down to the telephone booth on Main Street where I saw Eddie Johansen and a guy I know as Homer shouting at each other. We were then joined by Vince Bellows."

MR. GREENWALD: Yes.

Q Then, of course, I felt it is reasonably fair to say we are at the point where I do not want to have to read this once again.

But Eddie, Vince and Homer were all together --

MR. ROSEN: I think that is unfair, your Honor. If a man walks up to two people fighting --

THE COURT: What Mr. Greenwald is bringing out is that after Vince arrived they were all together.

MR. GREENWALD: Yes.

MR. ROSEN: There is a different interpretation.

THE COURT: I think the jury understands that Johansen and Homer were there to begin with.

Is that correct?

THE WITNESS: Yes.

THE COURT: Vince then came up and Vince was with Johansen and Homer?

THE WITNESS: Yes.

MR. ROSEN: He was standing in a public street. If people are there, in curiosity you might walk up and watch.

THE COURT: That is a matter of argument, Mr. Rosen. That is not what is said here.

Q So once again, I might ask, what wasn't a very good thing to do?

A Calling the police on Eddie.

Q But he was also very probably calling the police --

MR. ROSEN: I object to that question as incompetent, irrelevant and immaterial; not binding on the plaintiff.

12 THE COURT: Sustained.

If you ask if he heard anything, or if he meant anything else by what he said, you can do that.

Q Well, did he mean anything else?

THE COURT: No. Did you mean anything?

Q Did you mean anything else by what you said?

A No.

Q By what time was this happening?

A Around 11 o'clock.

Q When did the town police come and take Eddie Johansen?

A It was around 11 o'clock.

Q When did the state police come?

A Probably between twenty minutes and a half hour later.

Q Do you recall what happened when the state police car came?

A Mr. Homer came out of the phone booth and said something to him. I left.

Q Do you recall --

THE COURT: Mr. Greenwald, would you stay back? You furnished the witness with a copy. If you want to refer to it, just refer to it.

Q Do you recall in your statement that you must have heard or you heard Homer tell the trooper on the passenger's side that two guys were hassling him?

MR. ROSEN: I object. He already said it was an assumption on his part.

THE COURT: Right. Sustained.

MR. GREENWALD: Okay. But he did --

THE COURT: No remarks.

Q What did you do then? You testified you walked away?

A Yes.

Q Where did you go?

A I went back up to the carnival and had another beer or two.

Q How long were you at the carnival?

A Just a few minutes. They were getting ready to close up.

Q So when did you estimate that you left the carnival?

A Probably around 25 to 12, 20 to 12, somewhere around there.

Q Where did you go then?

A I walked back down the street and I met Vince. He was sitting on the stoop by his house.

Q What did you dowhen you met Vince?

A Sat down and started talking to him.

Q What happened then?

A Then the trooper car pulled up only from the other direction and stopped.

THE COURT: What do you mean by "the other direction"?

THE WITNESS: Well, first it was coming -- I don't know what directions.

THE COURT: No, I mean other than what? You mean different than it was the first time he came?

THE WITNESS: Yes.

THE COURT: Which way did it come this time, the second time?

THE WITNESS: It was coming down Main Street toward the Sullivan County Bank.

THE COURT: In other words, was the driver on your side of the street or on the other side of the street?

THE WITNESS: This time the driver was on the other side of the street.

THE COURT: All right. Did they have to go down and around and pull back up or --

THE WITNESS: No. They didn't. They just pulled up by the curb and stopped.

Q How long was this after you had, say, left the phone booth?

A 15, 20 minutes.

Q This could have been around 10 to 12? You previously testified --

THE COURT: Mr. Greenwald, with all due respect, we do want to finish this trial. I do not understand anybody to indicate that it makes much difference in the outcome of this case whether these events occurred at midnight or 11:30 or 12 or 2 o'clock. There is no alibi or denial that these people were together.

The question is, what happened when they got together?

MR. GREENWALD: Yes. I am trying to elicit that --

THE COURT: And I am trying to tell you that that is not necessary.

MR. GREENWALD: Okay.

Q Was this the same car as you saw at the phone booth, the same state police car?

A I couldn't say for sure. It was black and white, and the other one was black and white.

THE COURT: It was the same model; is that right?

THE WITNESS: Yes, yes.

Q You did not notice anything different about this car, any different markings or --

A No, they all look the same to me.

THE COURT: Do you turn the other way whenever you see it?

THE WITNESS: Yes.

Q But you have no way of knowing that it was a different one?

A No.

Q You had seen the troopers at the phone booth, also, hadn't you?

A I had seen a trooper car.

Q There were some streetlights here on the street, weren't there?

A Yes.

Q Yes. And were there some streetlights at where -- around the house?

A I don't recall. I believe there was.

Q Yes. Okay.

What happened then? The trooper car pulled up and the -- one trooper on the passenger side got out?

A No, he called out. I believe he said, "Hey Bellows, come over here."

Q Of course, the question is then what happened?

A Vince went over to the car.

Q And he got in?

A They put him in.

Q They put him in.

Did you hear anything, any words being said?

A Yes.

THE COURT: What did you hear?

THE WITNESS: He asked them if he was under arrest, and they said, "No."

He said, "Well, I'm not going to get in the car."

And they said, "Oh, yes, you are."

And they put him in.

Q Were there two troopers at this point?

A Yes.

Q Did you hear both troopers?

A I don't recall. It happened all so fast, I don't know which one was saying what when all this was --

Q So your recollection is not too good on this point?

A It's good enough to know exactly what happened. I don't know who was saying what.

THE COURT: In other words, you remember accurately what you remember, but you cannot say whether it was one person or another who made that statement?

THE WITNESS: Yes, yes.

Q What was your position to see him getting into the car? Were you in a position to see how he got into the car?

A Yes. I was only a few feet away from the trooper car.

THE COURT: Can you give us an indication, were you as far as youare from Mr. Greenwald, were you as far as

you were from the back wall, or what?

THE WITNESS: Closer. I was as close as where I was sitting before. As close as where Mr. Bellows is sitting.

THE COURT: You were as close to the car and to the troopers and to Mr. Bellows as you now are from Mr. Bellows?

THE WITNESS: Yes.

THE COURT: Which I would estimate to be 10 or 12 feet.

Q Did Mr. Bellows get in the car the same side you were sitting on? You were sitting on the stoop?

A Yes.

Q Did you get up? Did you get up to see what was going on?

A I stood up, yes.

Q You had stood up?

A Yes.

Q You stood up earlier?

A When they jumped out of the car and grabbed a hold of him, I stood up.

Q Did Mr. Bellows say anything as he got into the car or right before?

A I don't believe anything more than I told you.

Q Did you see Vincent Bellows again that evening?

A Yes, sir.

Q How long afterwards?

A This is only an estimate. I estimated it was around 20 minutes later.

Q Once again, I read from Defendants' Exhibit A, the statement of yours, David George Miller, "He couldn't have been gone more than 10 minutes."

A That's possible.

Q Was your recollection better then than it is now?

A Yes.

Q Did Mr. Bellows look any different?

A No, not too much.

THE COURT: You say "not too much." Did he look any different? And if so, tell us what the difference was.

MR. ROSEN: Did you hear the question --

THE WITNESS: Yes.

MR. ROSEN: -- the judge asked you? Turn to the judge.

THE WITNESS: He told me he had been hit, and I believed --

THE COURT: That is something else. What he looked like.

THE WITNESS: He looked like he had been hit.

MR. GREENWALD: I move to strike that answer.

THE COURT: I advise the jury to disregard what Mr. Miller had to say about whether he believed Mr. Bellows. That is for you to decide.

But I will ask you to tell us what were the specific manifestations of his appearance that made you think that anything had happened.

THE WITNESS: He was walking up the street, he was holding his side.

13 THE COURT: Yes?

THE WITNESS: That's about the only way he looked different.

THE COURT: All right.

Q You did not see any bleeding or anything?

A No.

Q Were you concerned about Mr. Bellows being intoxicated?

A I wasn't sure if he was or not. He was my friend; I was concerned.

Q There were indications previously and at this time that he was intoxicated?

THE COURT: Is that a question?

MR. GREENWALD: Yes, that is a question.

THE COURT: Put it in question form.

Q What had you seen that would indicate --

THE COURT: Had you seen anything? If you want to ask that.

A I hadn't seen anything. Like I said before, I could smell on his breath that he had been drinking. I didn't know how much.

THE COURT: Let me ask the usual questions about intoxication.

Was he walking normally?

THE WITNESS: Yes.

THE COURT: Was he talking normally?

THE WITNESS: Yes.

THE COURT: Did he eyes look normal?

THE WITNESS: I don't recall that.

THE COURT: Did he seem to be acting coherently?

THE WITNESS: Yes.

MR. GREENWALD: No further questions.

MR. ROSEN: We have no further questions.

THE COURT: Thank you, Mr. Miller.

(Witness excused.)

MR. ROSEN: The plaintiff rests.

THE COURT: Ladies and gentlemen, I will have to ask you to retire to the juryroom for just a moment while we take up some legal questions. Make yourselves comfortable please.

(Jury excused.)

MR. GREENWALD: At this time I would move to dismiss the complaint at the end of plaintiff's case and I would appreciate the opportunity to give a little argument on the matter.

I would state, of course, that this is a civil rights action, as has been pointed out. The plaintiff has testified that he had not done anything, but I think it was rather clear on cross-examination that he was involved or was at the telephone booth.

The plaintiff's witness, Mr. Miller, has further, I think, clearly established that Vincent Bellows was drinking seemed very possibly intoxicated, had been involved in some type of altercation with a Homer Salsbury. I do not think it is disputed that this was reported to the police and that the police came to investigate.

THE COURT: It is not disputed or established one way or the other. We were not sure whether it is the same people or how they happened to come up. I assume the defendants will be able to enlighten us as the case goes forward.

MR. GREENWALD: Certainly. But I think as to the taking into custody or the arrest, I think that the testimony that you have heard to this point should indicate that the

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police, the state police, had some reasonable cause or probable cause to take Mr. Bellows.

I would further state that, of course, the only evidence of a blow being struck is simply the testimony of the plaintiff.

THE COURT: Isn't that good enough for a prima facie case?

MR. GREENWALD: Well, I would concede that; however I think as a matter of law and at this point the Circuit has said in La Verne v. Corning basically not every push or shove is a violation of civil rights.

THE COURT: Not every push or shove, but if the officers did indeed pull him up by the neck and punch him when he was in the car under the domination of two of them, whether or not the doors could be opened, it would seem to me that was not just any push or shove.

There is no testimony so far that there is any reason to be concerned that he was trying to escape or there was any justification whatsoever for any violence that might have occurred in the car.

I am not deciding the facts here. What I have to decide is whether the testimony is such that the jury has a right to determine the matter.

MR. GREENWALD: You see, you have basically two

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points here. I see this case in that light.

You have the arrest, which took place a few minutes before, and then this allegation of assault to the ribs.

I, once again, emphasize this is a civil rights action and not a pure and simple action in assault.

THE COURT: What is the difference insofar as deciding a motion to dismiss at the end of plaintiff's case?

MR. GREENWALD: I recognize an aggravated assault does constitute a suit, and the Circuit has indicated that in Johnson v. Glick also indicated that a complaint might state a cause of action, but at this point, having heard the plaintiff's case, I would submit that there is not enough evidence to get to the jury on this point.

THE COURT: I understand that you submit that, but I disagree with you and the motion is denied.

Gentlemen, as long as the jury is out of the room, I have one matter to take up with other counsel. Come into the robing room.

If you will wait just a few minutes.

(Recess.)

(Jury present.)

THE COURT: All right. Mr. Greenwald?

MR. GREENWALD: Yes.

THE COURT: Call your witness.

MR. GREENWALD: The defense calls Dennis Dainack.

D E N N I S L. D A I N A C K, a defendant herein, called as a witness on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREENWALD:

Q What is your residence?

A I live in Harris, New York.

Q By whom are you employed?

A New York State Police.

Q In what capacity?

A As a trooper.

Q How long have you been a trooper?

A Presently about 8 years.

Q Were you a trooper on July 16, 1972?

A Yes, I was.

Q And on that date, could you tell us what your duties were?

A On that date I worked 11 to 7 -- 11 p. m. to 11 a. m. shift -- wait a minute. 11 p. m. to 7 a. m. in the morning.

THE COURT: In other words, you started the night

of July 16 and went into the morning of July 17?

THE WITNESS: That's right. And I worked patrol assignment.

Q Were you working alone or with a partner?

A I was working with a trooper, Van Houten.

Q What area were you to patrol that evening?

A That evening we were assigned the upper half of the county, which included Livingston Manor.

Q What county was that?

A Sullivan County.

Q Could you estimate how big an area that was that you were supposed to patrol?

A Well, on Route 17 it's probably 40 or 50 miles.

Q You started work that evening at what time?

A 11 p. m.

Q When did you leave the stationhouse?

A We left shortly after 11.

Q Did you have any calls at that time?

A No, not immediately.

Q So what was your purpose in leaving the station-house?

A To just resume patrol duties in our assigned area.

Q What road were you on on that patrol?

A Route 17.

Q Was that the Route 17 expressway?

A Yes.

Q Did there come a time when you received a call over your radio?

A Yes, there did.

Q What was the nature of that call?

A There was a complaint to --

MR. ROSEN: I must object to any complaint in the absence of the plaintiff as not binding upon him, as hearsay.

THE COURT: I will sustain the objection, but I will allow him to testify as to what he did as a result of their receiving the call.

Just tell us what you did as a result of receiving the call.

THE WITNESS: I don't understand what you mean.

14 THE COURT: After you got the call, what did you do?

THE WITNESS: We proceeded to the location of the complaint.

THE COURT: Okay.

MR. GREENWALD: I would just request that he be allowed to answer what he heard on the radio.

THE COURT: That is precisely what I won't allow. It would be hearsay.

MR. GREENWALD: Exception.

THE COURT: But I gather you got a complaint; is that right?

THE WITNESS: Yes, sir.

THE COURT: As a result of the complaint, where did you go?

THE WITNESS: Livingston Manor, New York.

Q By the way, what type of vehicle were you in at the time?

A A 1972 Plymouth, I think marked as a state police vehicle, colored black and white.

Q Did it have any other distinctive markings?

A It said "State Police" on the side of it, and on the front and the back.

Q And --

A And a light on the roof.

Q Yes.

Who was driving this vehicle?

A Trooper Van Houten.

Q To get back, I think I can ask this: At what time did you receive this complaint?

A It was probably around 12 midnight. In that vicinity.

Q Were you told to do anything?

A Yes. We were told to respond to a complaint.

Q Where were you supposed to go?

A In Livingston Manor.

Q Were you supposed to see anybody?

A Yes.

Q Who was that person?

THE COURT: Would you just tell us what you did, not what you were told. I do not know why Mr. Greenwald won't accept my ruling.

A I had a complaint to go to Livingston Manor.

THE COURT: No, no. Just tell us what you did. You got a complaint. I said three times do not tell us what you were told, tell us what you did.

A I arrived at Livingston Manor and talked to a person who called the complaint in.

THE COURT: Who called the complaint in? You can tell us who you spoke to.

THE WITNESS: I spoke to a Homer Salsbury.

Q Where was this?

A In Livingston Manor on the Main Street by a phone booth.

Q Was it at any intersection?

A Well, it's on Old Route 17 and Main Street of Livingston Manor.

Q When you talked to Homer, what happened or what did you say to him and what did he say to you?

MR. ROSEN: Objected to as not binding on the plaintiff.

THE COURT: Sustained.

MR. GREENWALD: I didn't --

THE COURT: I said sustained insofar as it relates to telling us what Homer Salsbury said.

Q What did you say?

MR. GREENWALD: I think that he can relate a conversation.

THE COURT: He certainly cannot relate the conversation of the third party. Mr. Salsbury is not subject to correction under those circumstances as to what he told the witness is true or not.

MR. GREENWALD: I think it has a lot to do with the state of mind, what he was told and why the defendant acted as he did.

THE COURT: I will allow you to tell us what you were told with the following instructions to you, ladies and gentlemen:

The defendants in this case claimed whatever they did they did in good faith, believing they had the right to do, and perhaps an obligation to do, what they did.

You will have to decide whether they were or were not in good faith. One of the factors that you may take into consideration in determining whether they were in good faith or not was the state of mind that they were in, the defendants were in, at the time that they did what they did.

Therefore, I will allow the officer to tell you what Salsbury -- is that his name, Homer -- what Homer Salsbury told him, but only for the purpose of your being able to understand what the officer had in mind as the result. In other words, we do not know whether what Salsbury told him was true or not, but he may have believed it was true.

MR. ROSEN: I must object to that and note my exception, sir, because we cannot exclude from the jury the limitations placed upon your Honor's directive.

What he had in his mind should not affect the rights of the plaintiff to be free from interference.

THE COURT: What he had in his mind in my opinion is definitely relevant to his good faith. It may not be conclusive or controlling, but it is relevant.

THE WITNESS: Could you repeat the question?

THE COURT: What did Salsbury tell you?

THE WITNESS: Salsbury told me that he had been assaulted by a couple of unknown people and that one of the people was still there. The Rockland police had been there

and taken one of them away.

THE COURT: What do you mean one of them is still there? He was not right where you were, was he?

THE WITNESS: He was in the vicinity, the immediate vicinity.

Q Did you see Homer point to anybody?

A Yes, he did.

Q Is that a person in the courtroom now?

A Yes, he is.

Q Could you point to him?

A Yes. Mr. Bellows there (indicating).

THE COURT: How far from Salsbury was Bellows at the time that Salsbury pointed at Bellows?

THE WITNESS: About half the length of this room, your Honor.

THE COURT: Would you estimate that to be what? What do you mean when you say that?

THE WITNESS: 150 feet.

THE COURT: Where was Bellows at that time?

THE WITNESS: In relation to the phone booth, he was sitting on a small bridge over a little brook, which is 150 feet away from the telephone booth.

THE COURT: There has been testimony, as you heard, about you and trooper Van Houten ultimately taking Mr.

Bellows into custody. This was before that event, I take it?

THE WITNESS: Yes, it was.

THE COURT: Okay.

Q By the way, did you know the plaintiff, Vincent Bellows then?

A No, I did not.

Q What did you do then?

A Well, then we were busy with the Salsbury complaint and I motioned for Mr. Bellows to come over to the car, which he did.

He approached the car. He said his name was Vincent Bellows. "I'm not going to tell you anything else. I don't have to. And I'm walking away."

And he walked away.

Q Had you said anything to him before he said this to you?

A No.

Q He said this spontaneously?

A Yes.

Q Did you follow him as he walked away?

A No, I did not.

Q What was occurring at the time?

A At that particular time Salsbury was rather

excited over the assault complaint, and his father pulled up at the same time.

MR. ROSEN: I move to strike out the answer what Salsbury was. We have no opportunity to examine him.

THE COURT: I sustain it.

But his father drove up. The jury will disregard what the witness said about Homer Salsbury's state of mind, because you cannot testify about anybody else's state of mind.

Q How did he look?

THE COURT: Tell us how Salsbury looked.

A He looked very excited.

THE COURT: What do you mean by that? What were the manifestations?

THE WITNESS: He was red faced and screaming and hollering and jumping up and down. At that same time his father pulled up and was in the same physical state.

THE COURT: Was he driving a car, the father?

THE WITNESS: Yes, he was, your Honor.

THE COURT: I do not suppose he was jumping up and down?

THE WITNESS: His dismounted from his vehicle.

THE COURT: Okay.

Q What did you say to them at that time?

MR. ROSEN: I object to any conversations in the absence of the plaintiff.

MR. GREENWALD: I am asking what he said. He can be cross-examined.

THE COURT: I do not know what it will prove, but go ahead and tell us what you said.

A I advised the subjects that the Rockland Police had been there; if they wanted to pursue the matter any further, they should contact the justice in the morning, and I left this area.

THE COURT: By "the justice," you mean a J.P.?

THE WITNESS: Yes, sir.

Q By the way, going back perhaps a few minutes, did you notice anything about Vincent Bellows at the time he came over to you at the phone booth, anything in his tone of voice?

MR. ROSEN: I must object to leading a police officer on such a direct subject.

THE COURT: It is direct examination. You are right. Sustained.

Anyway, could you tell us what you observed about Bellows, if anything, that was unusual?

THE WITNESS: Yes, sir. He had a belligerent tone to his voice, an attitude.

Q To return to -- you had told what you testified to

about, I believe, Homer and his father. What did you do then?

A After I had talked to them?

Q Yes, after you had talked to them.

A We left.

Q You left.

About what time would you estimate this was?

A Shortly after midnight.

Q From what direction did you go?

A We proceeded down through town and we turned around and came back up through town.

Q I might just ask you to perhaps, in the interest of saving time, just give a narrative of, you know, driving up. What happened?

A At this time we drove through town and I saw the subject Bellows sitting on the stoop a short ways from the complaint.

We went further up the street, turned the car around, and we came back on that side of the street.

And I pulled up and I got out of the car, and I walked over to Mr. Bellows, having a conversation with him about the previous complaint, what his involvement was.

He was still belligerent, wouldn't offer any identification.

At this point --

THE COURT: Did you ask him for identification?

THE WITNESS: Yes, I did, your Honor.

I was close enough. I could smell the alcohol on his breath, and his bloodshot eyes, and he was sitting on the stoop.

And when I started to question him, the other two people that were with him stood up.

Then it was at this point that Trooper Van Houten appeared on -- next to me. And I informed Bellows that he was under arrest and he was going back to the station for fingerprints for the purpose of identification.

We then assisted him to his feet. He was sitting on the stoop. We brought him over to the car and he got in the car voluntarily.

We drove a short ways down the street and made a turn towards the route back to the station. It was at this time that Mr. Bellows started to physically cry and said that we never give anybody a break.

THE COURT: He started -- what did you say?

THE WITNESS: Physically cry.

THE COURT: You mean from his eyes?

THE WITNESS: With tears.

THE COURT: With tears. Okay.

THE WITNESS: That we never give anybody a break; that he had been drinking and that he didn't want to be stopped, and he didn't carry any identification. That he lived upstairs from where we picked him up, and he would take us there and show us whatever we wanted to see.

And it was just about at this time that we received another complaint, and wewere -- we had to go, so Trooper Van Houten and myself decided that he wasn't intoxicated to the point where he would endanger himself or others, and we turned back through town and dropped him off. And that's it.

Q Let me ask you, how long do you estimate he was in the car?

A Five or ten minutes.

Q Did you at any time, while you were in the car, hit Mr. Bellows?

A No, I did not.

Q Did you in any way touch Mr. Bellows?

A No, I did not, other than assisting him into the car. From the stoop to the car.

Q Did you touch him when he left the car?

A No, I did not.

Q Did you see anybody else, any other state trooper hit or touch him?

A No.

Q Did he need any assistance to get out of the car?

A No.

Q Did he look any different when he left the car than when he came into the car?

A No.

Q Did you ever turn around in your front seat while you were in the car?

A I turned to the side. I didn't turn completely around.

Q You did talk to him in the car?

A Yes, I did.

Q Did you ever make any remark to him ever about a muffler while you were --

A No, he made a remark to me by the phone booth about the muffler on the car.

Q And you never recall hearing about it again?

A Pardon me?

Q You never heard about that again?

A No.

Q You never said anything about it?

A No.

MR. GREENWALD: No further questions.

CROSS-EXAMINATION

BY MR. ROSEN:

Q You were wearing your uniform that night, Trooper, were you not?

A Yes, I was.

Q You were equipped with handcuffs and the revolver and the usual equipment of a state trooper, were you not?

A Yes.

Q And so was Trooper Van Houten?

A Yes.

Q After you got the call, as you say, you went down to investigate this Homer Salsbury situation, as you have put it, right?

A Yes.

Q And you had a talk with him?

A Yes.

Q After you had a talk with him and his father, you told them to go before the justice in the morning and make a complaint, didn't you?

A Yes.

Q You told them to do it and not you to do it; isn't that so?

A That's right.

Q You did not make an arrest right there on the

spot when Homer Salsbury said or, as you put it, pointed out Vincent Bellows; you did not walk over to Vincent Bellows and arrest him on the spot, did you, for that?

A I couldn't.

Q You could not because no crime had been committed in your presence; isn't that so?

A No.

Q You knew the law on that, that on a misdemeanor case you cannot arrest anyone where a crime has not been committed in your presence; isn't that so?

A You have to rephrase that. I don't understand that.

Q Well, let me ask you: You say you do not understand, but one thing you did understand was that after you had the conversation with Homer Salsbury and his father, you advised and told them to go before a judge and make a complaint, didn't you?

A Yes, I did.

Q So that instead of making the arrest yourself you told them to go somewhere else, didn't you?

THE COURT: He has admitted that or he has agreed with you on that.

MR. ROSEN: We are trying to find out, Judge, as to why he did that.

THE COURT: Ask him why?

Q Why did you do that?

A The Rockland P. D. had been there and they took one person away, and Bellows had walked away. There was nobody there to arrest.

Q And how did you say to the judge's question that Salsbury pointed out Bellows, who was half the length of this room away from him? How did you come to make that answer?

A That's the way it was.

Q How could he point him out if Bellows was not there?

A He was there. As soon as he told me his name, he walked away. And this was the same time his father --

Q It was not a question of telling his name. You said he pointed out Bellows who was half a distance away, half the distance of this courtroom in distance away from where we were, right?

A Yes.

THE COURT: Then what we are trying to find out is, why didn't you walk over to Bellows and either speak to him or arrest him?

THE WITNESS: Well, your Honor, at this particular time Bellows' father -- I mean Salsbury's father had pulled up, and there were other people there, and it was a bigger

ruckus than to have Bellows walk away.

THE COURT: Well, you earlier said that you could not arrest or you did not arrest Bellows because you could not arrest Bellows. I do not understand what you mean when you say "could not"?

THE WITNESS: He wasn't there, your Honor. He had walked away. There was nobody there.

THE COURT: There was a time when he was there, wasn't there?

THE WITNESS: Yes, sir.

THE COURT: And you are just saying by the time you had to make a decision, he was no longer there?

THE WITNESS: Yes.

Q You are an active, physically capable officer, aren't you?

A Yes.

Q Van Houten is also an active, physically capable officer, isn't he?

A Yes.

Q How far away did Mr. Bellows walk that you could not run after him?

A I don't know. I didn't pay attention. I was more concerned with the original complaint.

Q So you were not concerned with Bellows at all at

that point, were you?

A Not at that immediate point, no.

Q You turned around, drove the police car away, came back, and then you took Bellows in custody, didn't you?

A Yes.

Q You asked him to cover over and get into the car, right?

A No, I did not.

Q What did you do?

A I dismounted from my car and walked over to him.

Q What did you do?

A I don't remember the exact conversation I had with him.

Q Did you forget what you said to him or what he said to you?

A I don't recall the conversation.

Q At the point where you saw Bellows on his stoop, on the second trip around, the incident with Salsbury was still in your mind, which had happened only a short time before, wasn't it?

A Yes, it was.

Q Then why didn't you lock him up right then and there on the spot?

A Because I told the original complainant to go to

the judge.

Q And as you told it, isn't it a fact, Officer, that under your instructions a police officer in the State of New York has no authority to arrest for a misdemeanor not committed in his presence?

A That's right.

Q And that is what happened here, isn't it?

A No.

Q Well, did you see Mr. Vince Bellows do anything to Homer Salsbury?

A No.

Q Nothing happened in your presence, did it?

A That wasn't why I arrested him.

Q I will get to that in a minute.

We are talking of the incident to which you refer, the Homer Salsbury incident. You have admitted, have you not, that you could not arrest him for that because it was not done in your presence?

A That's right.

Q If he had been done in your presence, you would have arrested him on the spot, wouldn't you?

A Yes.

Q So that so far as you were concerned, and as far as Van Houten was concerned, you had no connection with the

Salsbury incident at all, right?

A Other than being there at the time he called.

Q You came. Anybody can call you. You'll go, won't you?

A Yes.

Q And you may do nothing also after you arrive; isn't that also true?

A True in some occasions.

Q In this particular case, you turned your car around and you came back, and you indicated to Mr. Bellows that he should come over to your car, right?

A No, sir.

Q What did you do?

A We turned the car around. I pulled up to the curb and got out of the car and walked over to Bellows.

Q I see.

When you walked over to Bellows, as you explained, you helped him to get him and helped him get into your car; is that it?

A After I had arrested him.

Q You made an arrest, you say?

A Yes, sir.

Q Do you knowwhat an arrest is?

A Yes, I believe so.

Q Well now, Officer, when you arrest a person, you must make a report at the State Police Barracks, don't you?

A Not necessarily so.

Q Oh, you can arrest people and take them to your home or some other secret rendezvous?

A Clarify what you mean and I'll answer you.

Q Look, Officer, you took this fellow into your custody under an alleged arrest. And what did you do with him? Did you, as a state police officer, report back to your barracks?

A You left out a step.

Q What step?

A We let him go.

Q I know you did.

A So, therefore --

Q What I want to know, one thing differently: You made an arrest as a police officer, and you did not report it to the state police barracks; is that a fact?

A Other than the words, of arrest, no, I did not.

THE COURT: I do not follow you on that.

THE WITNESS: I did not make any papers out. I told him he was under arrest.

THE COURT: That is what I mean. You made no report?

THE WITNESS: No.

THE COURT: Could you tell me what the basis for your arrest of him was on the occasion when you did arrest him?

THE WITNESS; I arrested him for the public intoxication, and I was going to take him back to the station for the fingerprints. To identify him and see where he actually did live, because I didn't know him at all, and I didn't know that that was his stoop where he lived.

Q Apart from whether you knew it was his stoop --

THE COURT: Let me ask you this:

On what basis did you conclude that he was intoxicated? Never mind that it was public or not.

THE WITNESS: Well, your Honor, when I spoke with him, when I approached him from the car and I spoke to him, it was evident from the breath and from the eyes -- I was close enough to see and smell -- that he had been drinking.

THE COURT: So you concluded on the first occasion that he was intoxicated?

THE WITNESS: Bythe phone booth?

THE COURT: Yes.

THE WITNESS: No, your Honor. I wasn't that close to him.

THE COURT: When did you conclude that he was intoxicated?

THE WITNESS: When I approached him the second time.

THE COURT: Why did you approach him the second time if you let him go the first time?

THE WITNESS: Because of his attitude and the way he walked away; that we did not want to come back there again that night for another assault complaint, and we just approached him and I talked to him.

THE COURT: When you stopped your car and you got out of your car, what was your purpose and what did you have in mind at that time?

THE WITNESS: Just to talk to him, Mr. Bellows.

THE COURT: You are a police officer, and we can all talk to each other, but you must have had a law enforcement purpose, I assume.

THE WITNESS: Well, your Honor, since he was involved in the first complaint, I wanted to talk to him and him what transpired, and he had a completely belligerent attitude at that time. He wouldn't tell me anything.

Q In other words, Officer, at the point when you went back the second time it was more or less an investigative inquiry; is that it?

A Yes, I guess you'd say that.

Q Do you always arrest people who do not wish to cooperate with you?

A No.

Q In this particular case, you did?

A Yes.

Q And in this particular case exercising your power as a police officer and arresting the defendant, you did not make a complaint to any judge, any court, nor did you make a report to the state police barracks; isn't that so?

A It didn't go to that stage.

Q Well, you did not, did you?

A It didn't -- no, I didn't because it didn't go to that stage.

Q In other words, you and officer Van Houten, police officers, assumed the authority of a judge, of a court, and you decided to let Mr. Vince Bellows go free; is that it?

MR. GREENWALD: Objection.

THE COURT: On what ground?

MR. GREENWALD: Well, it seems he is making a characterization.

THE COURT: Let us forget whether he assumed the authority.

Did you and Trooper Van Houten decide whether to

let Mr. Bellows go?

THE WITNESS: Yes, we did.

Q Now, you said on your direct that the maximum amount of time that Mr. Bellows was in the police car with you and Van Houten was five or possibly ten minutes more or less. Right?

A Yes, sir.

Q In that five or ten minutes you drove him in this car to a point, and then you drove him back and let him out of the car, right?

A Yes, sir.

Q At the time when you arrested him, he had blood-shot eyes, a smell on his breath, and was intoxicated, right?

A In my opinion.

Q He might have been?

THE COURT: No, in my opinion.

A I said in my opinion.

THE COURT: In his opinion, he was intoxicated, he said.

The words which you thought might have been were "in my opinion."

MR. ROSEN: I beg your pardon.

Q In five minutes or, at most, ten, he was that

coherent, that he recovered, that capable that you drove him right back and let him go; is that it?

A Yes.

Q How long does it take a person to recover from an attack or seizure of intoxication, if we may call it that, so that they go back to normalcy from the prior condition of incompetency?

THE COURT: I think we will have to let the jury decide that on the basis of their general experience. I do not know, unless you want to qualify the witness as an expert on this.

MR. ROSEN: I do not want to qualify him, but he has done that of his own volition. In other words, he makes the decision he is intoxicated, and he made the decision he was not intoxicated.

THE COURT: That is right. You are asking him about general human behavior and he has already answered you about the plaintiff's behavior.

Q While you were in the car, and in answer to the court's own question, you said that Mr. Bellows cried, right?

A Yes.

Q Tears were down his face?

A Yes.

Q Yet at the very outset of your initial contact with

him he was capable and knowledgeable enough to say to you, "My name is Vincent J. Bellows and I don't have to discuss anything with you, and I don't have to give you anything else," right?

A Yes.

Q You know, do you not, that Mr. Bellows and the officers of the police barracks at Ferndale had him run in --

MR. GREENWALD: Objection.

THE COURT: Overruled. I would allow questioning on this line -- well, I would have to give some instructions to the jury here.

One of the demands or requests of a plaintiff in this case is for what are called punitive damages. I will explain to you later, when I tell you about the law, that you cannot, even should you find the defendants liable here -- and I am not saying they are not, because it is not my job, that is yours -- you cannot impose punitive damages unless you find that the defendants acted with malice or oppressively or wantonly, as the phrase goes.

For the purpose of your determining whether or not there was any malice in this case, I will allow Mr. Rosen to question the defendants about their knowledge, if any, of the plaintiff's previous relations with the state troopers. It is just for that purpose, to indicate what was in Mr.

Dainack's mind or when Mr. Van Houten testifies, what was in his mind about the plaintiff.

Are you going to refer to his deposition?

MR. ROSEN: No, I am referring to something else.

Q Did you ever hear the name of Vincent Bellows at the state police barracks, whether you knew him or not?

A No.

Q Did you ever hear he had sued the State of New York over an unlawful arrest in 1965?

MR. GREENWALD: Objection.

THE COURT: Overruled. You have a continuing objection to these questions.

A No.

Q Did you know the incident of the Eugene Porter perjured affidavit against him, secured by the state police?

MR. GREENWALD: Objection as to his characterization.

THE COURT: Sustained. The jury will disregard a reference to a perjured affidavit.

Q Do you recall, sir, the incident in which the state police obtained an afiidavit from one Eugene Porter --

THE COURT: Do not ask him if he recalls. Ask him if he knew at the time about it.

Q Did you know of that arrest and the disposition

of that case?

A No.

Q Did you know Inspector Reichmann?

A Do I know him?

Q Yes.

A Yes, I know him.

Q Did you know that around 1970 --

THE COURT: Mr. Rosen, I am not going to allow you to spread a whole history before the jury if it is not necessary.

I want to ask you, had you ever heard of Mr. Bellows before the night of July 16, 1972?

THE WITNESS: No, sir, I never heard him by name or I do not know him by sight.

THE COURT: You never heard of him in any connection whatsoever?

THE WITNESS: No connection whatsoever.

MR. ROSEN: The question is not what he said. They are entitled to determine, as we shall outline in all the various matters, that Mr. Bellows never cried.

MR. GREENWALD: I object.

MR. ROSEN: They have a right to know the facts.

THE COURT: Just a minute, please. Gentlemen, I would like to see you in the robing room.

Ladies and gentlemen, let us take a short recess at this time.

(Jury excused.)

THE COURT: You may stand down.

(Witness excused.)

THE COURT: Mr. Rosen, do you want to make an offer of proof?

MR. ROSEN: Yes, sir.

In the direct examination of Officer Dainack, he made a statement that in the car Mr. Bellows said, "You never give anyone a break," and he cried.

THE COURT: Right.

MR. ROSEN: The history of Mr. Bellows on the state police at the Ferndale Barracks, especially as represented by me and my associates, has been a continual series of arrests, trials and acquittals.

THE COURT: What has that got to do with Mr. Dainack's testimony?

MR. ROSEN: His actions, your Honor --

THE COURT: Who's?

MR. ROSEN: Mr. Bellows -- are of such a nature that he has been thoroughly instructed by me what to do when he is arrested, because we expected it every single day.

THE COURT: You may or may not be able to bring it out from Mr. Bellows himself on the rebuttal of the crying testimony, but you cannot bring out from Mr. Dainack that he did not know about these things and try and prove they happened by getting him to admit he did not know about them.

MR. ROSEN: If your Honor puts it in this fashion, I will put it in in rebuttal, but one thing I want the jury to know because of that testimony, the whole world might cry but not him.

THE COURT: Well, in relation to the crying proposition, I may allow you to put it in, but since the officer has sworn -- at least there is no reason at the moment to disbelieve him -- that he never heard of Mr. Bellows before, he could not, by definition, have known of these episodes; and, therefore, the reason to which I allowed you to open up the subject matter to begin with, namely, what Mr. Dainack knew about the previous situation, no longer obtains.

MR. ROSEN: I would not dispute too seriously with you on that because I would expect he would give me a negative answer anyway, but the question here is, on the purpose or the progress of the trial on this point: If a person such as --

THE COURT: I do not think we need to have any

further discussion here. I have said if you put Mr. Bellows back on the stand I would consider it relevant to whether or not he might -- relevant, certainly not conclusive -- to whether or not he might have cried in the car, whether that is believable or not, he showed that he had been fortitudinous enough, if that is the word to use, to bring on all these actions.

On the other hand, if I were on the jury I might very well say he is a very high strung man who suddenly snapped and cried, so it does not prove it and it might not be relevant.

MR. ROSEN: That is a chance I have to take.

THE COURT: That is right.

Let us take a short break at this time. Please do not go too far from the courtroom, though.

(Recess.)

(Jury present.)

MR. ROSEN: All right, sir.

THE COURT: Yes, Mr. Rosen.

BY MR. ROSEN:

Q Going back to the Salsbury incident, and your advise to them to go before a judge and make a complaint if they had one, right?

A Yes.

Q You know, do you not, that Salsbury never made a complaint to any judge or court about this alleged incident; isn't that right?

A I didn't know that.

Q Well, didn't you investigate it?

A After I told him that, I assumed that he did what he was going to do.

Q Well, they did not.

THE COURT: Wait a minute, Mr. Rosen. You cannot testify as to that. The jury will disregard your statement to that effect. I mean, I do not know that it happened or not --

MR. ROSEN: Withdrawn.

Q Did you make any investigation between July 16, 1972, and March 22, 1976, which is today, to ascertain whether or not Homer Salsbury made any complaint about this alleged incident against Vincent Bellows?

A No, I didn't.

Q How far did you drive in the police car with Bellows after you took him in the police car?

A Maybe two or three blocks.

Q Two or three blocks. Then what did you do?

A When?

Q Well, you drove him two or three blocks. Then

what did you do?

A When?

Q Well, you drove him two or three blocks from the front of his house, two or three blocks away, and then what did you do?

A It was all a circle.

THE COURT: You mean the total circle or total circuit was three blocks?

THE WITNESS: Yes, sir.

THE COURT: And that is when you let him out?

THE WITNESS: Yes.

Q That you took you five or ten minutes?

A Yes, sir, it did.

Q How long are the blocks?

A I don't know, maybe half a mile. I mean, total half a mile.

THE COURT: You mean the total ride was half a mile?

THE WITNESS: A half a mile, three quarters of a mile.

Q This total ride of a half a mile took you five to ten minutes; is that it?

A Yes, it did.

Q Just one other thing.

When you drove up to in front of his door on the second trip and called to Bellows, he was sitting on the stoop, wasn't he?

A I didn't call to Bellows.

Q You called to come over to the car?

A No, I didn't testify to that.

Q How did he come over to the car?

MR. GREENWALD: Objection.

THE COURT: The present question is all right, but this has been testified to several times.

MR. ROSEN: Yes.

THE COURT: All right. This is the last time.

Will you tell us what happened?

A I pulled up to the curb, I got out of the car and I walked over to where Bellows was sitting.

THE COURT: To be blunt about it, the plaintiff and Mr. Miller have testified that somebody from your car -- you heard this -- called Mr. Bellows to come to the car; do you remember that? I mean, do you remember their testifying?

THE WITNESS: Yes.

THE COURT: Is that incorrect according to you?

THE WITNESS: Yes. At the time of the stoop?

THE COURT: I am talking about the time of the stoop.

THE WITNESS: Yes, your Honor.

THE COURT: Did you call to Bellows the previous time?

THE WITNESS: Previous, at the phone booth.

THE COURT: All right.

MR. ROSEN: Would you bear with me a moment?

THE COURT: Yes.

Q Did you stop your car at any point at the half mile from the point of origin to the point of return?

A Yes, to turn around.

Q Just for the sake of turning around?

A Yes, sir.

Q Your car was in motion then, wasn't it?

A Yes.

Q So that there was no stopping at all, you just went from the front of the stoop and back around the three blocks and came back in front of the bank and put him out.

A Yes.

Q So when did you question him to ascertain that he was coherent, no longer intoxicated and able to get around under his own power?

A While he was in the car.

Q How long did that take?

A Three or four minutes.

Q While the car was in motion?

A Yes.

Q You did all that in three minutes, right?

A Yes.

Q Why didn't you do the same investigation right there on the spot in front of his stoop?

A Well, sir, when I first questioned Mr. Bellows and the other two people that were with him got up and looked like they were annoyed that I was talking to him, I decided to remove him from that area to ask him my questions.

Q Whether they got up or sat down, whatever they did had nothing to do with him?

A They may have had something to do with me.

Q Did they say anything to you?

A I didn't want the chance for them to say.

Q Did they say anything to you?

A No.

Q Did you see Mr. Miller there, the witness who just testified?

A There was two other people there. I don't know their identity.

Q What connection has that got to do with Mr. Bellows?

A Because there were two other people sitting with

him.

THE COURT: Are you suggesting that you were concerned about your own safety or what?

THE WITNESS: Yes, your Honor.

THE COURT: Will you tell us what you mean? You know, tell us.

THE WITNESS: Well, your Honor, when I'm talking to a subject and I believe he's intoxicated, and two friends there with him get up and look like they're concerned that I'm speaking to him, I don't want to have an altercation with two other people besides the person I'm talking with.

So I felt, in my judgment, that it was best to remove him from that area and talk to him alone.

Q You had another officer in the police car, didn't you?

A Yes, there was one.

Q And you were armed, weren't you?

A Yes.

Q So that so far as this case is concerned, Homer Salsbury was told to go away, the local police arrested whoever there was in the phone booth, Johansen, I think it was, and the plaintiff was sitting on his stoop, and all he would tell you was his name and said, "I don't have to answer your questions, and I don't have to give you any identification,"

and then you locked him up, didn't you?

MR. GREENWALD: Objection.

THE COURT: "Locked him up" is an improper phrase.

MR. ROSEN: Arrested him.

A That's a big, long question. What do you want to ask me?

Q After the plaintiff said to you, "Here's my name, I'm Vincent J. Bellows, and I don't have to answer any questions" --

THE COURT: The jury is aware of that.

Q -- you then put him into the car and took him away, didn't you?

MR. GREENWALD: Objection.

THE COURT: It has been asked and answered, Mr. Rosen.

Q Were there any witnesses at the point to which you claim you took Mr. Bellows in the car and made the turn around?

A What do you mean?

Q Well, you took the car, you took him in the car, you went to a point and turned around and came back. Were there any witnesses to that?

A Trooper Van Houten and myself.

Q That is all?

A And Mr. Bellows.

Q When you make an arrest of a person as a state police officer because you think a crime has been committed, or that a person is intoxicated, doesn't the police rules and regulations require that you follow through on that complaint and lodge it in the appropriate court or with the appropriate judge?

MR. GREENWALD: Objection. I think it is irrelevant what the police regulations state.

THE COURT: Overruled.

A Could you repeat the question, please?

THE COURT: Would you read back the question, Mr. Reporter?

(Question read.)

THE COURT: Do you understand the question?

THE WITNESS: Can you make it simpler?

THE COURT: I think the question is, don't police regulations or, anyway, governing regulations require, when you make an arrest or take in somebody who is publicly intoxicated, that you make a charge against them somewhere?

THE WITNESS: If the complaint is followed through, yes.

THE COURT: Mr. Rosen is asking you, don't regulations require you to follow it through?

THE WITNESS: Yes, it does.

Q Under what regulation did you and Van Houten assume the authority to arrest a citizen and you then make up your mind you do not want to prosecute him?

A Under the criminal procedure law,

Q That was regardless of the police regulations of the New York State Police; isn't that so?

A No.

MR. GREENWALD: Objection. I think this is going far afield.

THE COURT: I do not think it is going afield at all, but I am not sure the witness understands the question.

MR.ROSEN: He is a state police officer.

THE COURT: Do you understand the law to be if you take somebody in by an arrest, as you did in this case, according to yourself, that you do not have authority to let him go without presenting the matter to some constituted authority?

THE WITNESS: Yes,yes.

THE COURT: All right. So Mr. Rosen is asking you if you understand that to be the law, then on what authority did you let him go without presenting the matter to somebody else?

THE WITNESS: Your Honor, under the criminal

procedure law I felt that the elements of the crime was not, he was not intoxicated to the point where he couldn't take care of himself; therefore, there was no reason to bring it before a judge.

THE COURT: In effect you are saying that you believe that although your arrest was made in good faith and on good reason, when you examined into it you believed that the facts which you thought had existed did not exist; is that right?

THE WITNESS: Yes, sir.

MR. GREENWALD: At this point, your Honor, if I could, I would ask you to take judicial notice of the criminal procedure law, New York, Section 140.20, subdivision 4.

THE COURT: 140 what?

MR. GREENWALD: 140.20, subdivision 5.

THE COURT: Of the criminal procedure law?

MR. GREENWALD: Criminal procedure law. I do not have the text in front of me, but I think --

THE COURT: Please do not paraphrase it. I will take judicial notice of the law, of course, and I will bring it to the attention of the jury as to what the law of New York is on this point, but we do not want to paraphrase it.

MR. GREENWALD: All right.

MR. ROSEN: That is 140.20, subdivision 4?

MR. GREENWALD: Yes, it is in my answer.

MR. ROSEN: I have copies.

Q Did you ever say that you had the plaintiff in the police car and had merely taken him a block or two from the place where he had entered the car?

A Did I ever say that?

Q Yes.

A I don't --

Q Let me show you this duplicate copy of your answer to the interrogatories which I served upon your counsel, and I ask you --

THE COURT: What interrogatory number are you referring to?

MR. ROSEN: 14A, sir. So that the witness may have it entirely before him, I would like to show him the interrogatory itself and his answer to it.

THE COURT: All right.

A That's not necessary. I understand his question.

THE COURT: Does that refresh your recollection that you said that --

THE WITNESS: It does.

Q You took him a block or two?

THE WITNESS: Your Honor, if I can explain, this wasn't a circle.

THE COURT: I understand that.

THE WITNESS: Itwas a shape -- we went down this way, up this way, and up this way. The distance from here to here is a block or two.

THE COURT: Are you saying that your answer to the interrogatory meant that the farthest you got from the point where you picked Mr. Bellows up to the point where you ultimately turned around was only a block or two?

THE WITNESS: Yes, sir.

MR. ROSEN: He said the total distance was a block or two.

THE COURT: That is not inconsistent.

As I understand what you are saying, you went up a block or two and went over a block or two and that made three or four blocks?

THE WITNESS: I can draw it, your Honor.

THE COURT: Please do draw what you are talking about. Here, I will give you a piece of blank paper.

MR. ROSEN: If your Honor pleases, I do not think he can explain the answer that simply.

THE COURT: Maybe he cannot.

MR. ROSEN: He said he took him a block or two. This is the deposition.

THE COURT: Just a minute. Let him give this

explanation. If you think it is inconsistent, you can argue that to the jury.

Read the interrogatory and the answer.

I have before me an item that I am going to mark Court's Exhibit 2 in evidence.

Is there any objection to this going into evidence?

MR. ROSEN: I would like to see it, sir.

THE COURT: Evidence only of what the witness has just drawn.

MR. GREENWALD: Frankly, I think the interrogatory and the answer speaks for itself. I have no objection --

THE COURT: Gentlemen, do not argue the significance of the evidence in the course of the trial. You can argue that all before the jury, or you can argue it privately to me without the jury.

MR. GREENWALD: I have absolutely no objection to any diagram. In fact, I think it is helpful.

THE COURT: Good.

MR. ROSEN: May I ask him a preliminary question or two, sir?

THE COURT: Yes, you can ask a question or two.

XXX (Court's Exhibit 2 marked.)

Q On this sketch, marked Court's Exhibit 2, which

you have just drawn on this sheet of paper, you indicate a path from the stoop and then around in a loop. Do you see that loop?

A Yes, sir.

Q On that loop is a road. That represents a road, doesn't it?

A There's a caution light there.

Q Caution or no light, it represents a road that you went down, doesn't it?

A Yes.

Q Is it not a fact that that road, down which you went, also leads to the airport?

A Yes, it leads to Route 17.

Q It leads to the airport, doesn't it?

A Yes.

THE COURT: I take it you have no objection. It is received as indicated.

MR. ROSEN: Of course, we do not admit in anywise that alters the plaintiff's testimony that they took him to the airport.

THE COURT: Nobody said that you did.

XXX (Court's Exhibit 2 received in evidence.)

Q As a matter of fact, Officer, in the eight years that you have been on the force, and as a state police officer

you have followed a practice of asking people, whomever you wanted, their names and identification numbers and whatever questions you have had in your mind to interrogate them? If you did that or wanted to do that, you did those things, didn't you?

MR. GREENWALD: Objection.

THE COURT: Overruled.

MR. ROSEN: I will rephrase it.

Q As a police officer, have you ever stopped anyone and asked their name, identification number, and questioned them about any subject?

A For no reason, no.

Q You have done it with or without reason, haven't you?

THE COURT: Let us distinguish.

Q Have you done it with reason?

A Yes.

Q Let us assume in this case -- I do not admit it, but let us assume it -- that you had reason. You went over to the plaintiff and asked him his name, didn't you?

A Yes.

Q He told you his name?

A Yes.

Q You asked him for identification, didn't you?

A Yes.

Q He refused to give it to you, didn't he?

A Yes.

Q You asked him any other question that he refused to answer?

A I don't recall.

Q As a state police officer, because he refused to give you identification, you decided to put him in the car and take him to the state police barracks, didn't you?

A No.

Q What did you put him in the car for?

A I had arrested him for public intoxication.

Q I see. And that was the arrest that you did not follow through, isn't it?

THE COURT: We have got that, Mr. Rosen.

MR. ROSEN: Getting back to this point, Judge, this witness --

THE COURT: Please do not.

MR. ROSEN: Okay.

Q One thing is certain, the plaintiff told you he would not give you any further information, didn't he?

A Yes.

Q And that pleased you, didn't it?

MR. GREENWALD: Objection.

THE COURT: Overruled.

Q Come now.

A I don't know. What do you mean "pleased me"?

Q Were you happy about it, or were you offended that the plaintiff had the nerve to answer your questions?

A I just wanted to know who he was.

Q Didn't you know he lived there for 15 years?

A I never met the man before.

Q Whether you did or not, did you make any inquiry to see whether he was a stranger or a local resident?

A I did not know him. This was at 12 o'clock in the morning. Whom am I going to ask?

Q And this same intoxicated person was released by you after you had him in your custody about two blocks, right?

A Yes.

MR. GREENWALD: Objection as repetition.

THE COURT: Sustained.

Q After you let Bellows out of the car, he was, I presume, in the same condition as what you put him into the car; is that it?

A I didn't put him in the car.

Q Your associate, Mr. Van Houten?

THE COURT: You said you assisted him, I think.

A He got in the car under his own free will.

Q You helped him in?

A No, I didn't do that, neither.

THE COURT: You helped him to the car, didn't you say that?

THE WITNESS: I helped him to the car.

Q You helped him to the car.

And he had refused to give you his identification and nothing else but his name?

THE COURT: Let us not go over that.

MR. ROSEN: I have to introduce the question so it will be known what I am driving at.

THE COURT: Just ask the question.

Q You let him out of the car, did you not?

A Yes.

Q Did you get any further identification papers then?

A No.

Q So that when he refused to give you identification you put him in the car or assisted him into the car, you still did not have any identification papers, and you let him out of the car; isn't that so?

THE COURT: Mr. Rosen, that is clear and you can argue it to the jury. You are just going over the same

questions and answers.

MR. ROSEN: I do not think that was brought out, that he let him out without the papers.

THE COURT: You can address the jury later. You have got the facts established for whatever their value is.

Q After you let Mr. Bellows out of the car, how long after that were you aware that he complained to the state police barracks about you?

A I don't recall, half an hour, an hour. I don't know.

Q You parted from him at about 12 o'clock, give or take a quarter or a half hour, the time is not relevant, and yet within about a half hour he had complained to your barracks and you then knew about it, didn't you?

A I didn't know about it until I returned to the station.

Q Well, you did get notified, didn't you?

A Oh, yes.

Q You also knew of the investigation by Officer Minihan, did you not?

A Yes, I did.

Q They questioned you about it, didn't they?

A Yes, they did.

Q Do you have a copy of your report?

A Yes, I believe I have o[illegible]

Q May I see it.

THE COURT: Yes, you may.

MR. ROSEN: This is my first observation of seeing this document, sir.

THE COURT: I do not know whether I can give you credit for that, Mr. Rosen. The federal rules permitted you to get a copy of it three weeks after you filed the complaint. But I certainly do not want to take time now for you to examine it, if it is as voluminous as it appears to be when it was handed to you.

Go ahead with other examination and you can look it over overnight. If you have any questions to ask.

MR. GREENWALD: I would say, of course, while I did hand it to him, I think that he did have adequate ability over the last few years to see it.

THE COURT: Be that as it may, I said I am not going to hold anything up on that account. You can look it over overnight, even now or the first thing in the morning, or make a copy of it or take the copy with you.

MR. ROSEN: Is that all right with you, counselor?

THE COURT: I do not care if that is all right with him. I am telling you that is the way it is to be.

MR. ROSEN: I will do that.

Q Can you tell me, sir, the length of time that elapsed from when you spoke to Salsbury at the telephone booth to the time you came back to the stoop where Bellows was?

A About 10 or 15 minutes.

MR. ROSEN: That is all we have, sir.

MR. GREENWALD: I think I will reserve any re-direct. Apparently Mr. Rosen is intending perhaps to do some more direct --

THE COURT: You mean some more cross-examination, yes.

MR. GREENWALD: More cross-examination.

THE COURT: Very good.

May I see counsel briefly in the robing room? Will the jury please stay here?

(In the robing room.)

(Discussion off the record.)

(In open court.)

THE COURT: Ladies and gentlemen, we are going to quit for the day. Will you please be on hand here ready to go at 10 o'clock tomorrow morning.

I want to give you these instructions, and that is not to talk about this case at all with anybody until you actually sit down in the jury room to deliberate after you

have heard all the evidence and you have heard counsel sum up and you have heard me tell you what the law is, because it would be absolutely unfair to either of the parties to try and decide the case until you have heard the whole story.

Sometimes the very last witness makes the most definite impression or a small item may make you see things in a light that you had not seen it in before.

So please obey the instruction. Do not think it is just artificial. I do not want you to get started on a line of thinking that will be prejudicial to any of the defendants here.

Thank you very much for your attention here. You are excused and I will see you tomorrow morning at 10 o'clock.

(Jury excused.)

THE COURT: Gentlemen, I will return to Mr. Greenwald -- I think you have given me some copies of material here.

MR. GREENWALD: Yes. I guess that is all.

(An adjournment was taken to March 23, 1976, at 10 a. m.)

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21 VINCENT J. BELLOWS

v. 73 Civ. 1189

DENNIS DAINACK and
LESLIE VAN HOUTE,

March 23, 1976
10 A. M.

(Trial resumed.)

(In the robing room; discussion off the record.)

THE COURT: Mr. Rosen has requested the court to advise the jury that the defendants are represented by the Attorney General of the State of New York, and the court has declined.

MR. ROSEN: In two prior claims filed on behalf of Vincent Bellows against the State of New York in the Court of Claims, we had made those claims against the State of New York by reason of the acts of individual police officers.

Under the law, as I understand it, such a claim against the State of New York could not be made under the statute involved in this case; and, therefore, the present claims in this court have to be against the individuals themselves, but the defendants are now being represented by Louis J. Lefkowitz, by A. Seth Greenwald, Assistant Attorney General, and I wish to disclose to the jury the

fact that the State of New York has provided the defense in this matter.

THE COURT: The reason that the court has declined or does decline to do so is that there is no charge here that any state authority other than the defendants themselves were culpable in the circumstances, it does not seem to me relevant for the jury to know that the defendants happened to be defended by the office of the Attorney General.

MR. ROSEN: I take an exception.

In the requests to charge -- this may be a bit premature, but at least we anticipate it, but you may want to have it without disturbing ourselves later.

Mr. Greenwald yesterday made reference to Section 140.20, subdivision 4 of the Criminal Procedure Law, and he now makes a request to charge based upon that section.

THE COURT: Right.

MR. ROSEN: I have examined that section with great care and I call your Honor's attention that all that section states -- would you like to look at it? I have a copy.

THE COURT: It is all right. Go ahead.

MR. ROSEN: -- [illegible] the police officer finds he has made a mistake for whatever he has done, he should release

the defendant, if he does not go any further, so that the harm done is not further aggravated.

THE COURT: The last few words you used are not in the statute.

MR. ROSEN: I know. That may be the purpose of it. However, that is not a defense to the violation of the rights of an individual.

THE COURT: I do not think that Mr. Greenwald asserts it as a defense. He asserts it because you have implied to the jury that a police officer, once he has taken somebody into custody, is legally obligated to present the issue of the defendant's behavior to a judicial officer or a quasi-judicial officer, and to negate that, Mr. Greenwald has asked me to bring to the attention of the jury that the law of New York does not impose such a requirement on a police officer, and I think it is proper that it shouldbe brought to the attention of the jury.

MR. ROSEN: We go a further step, then. You must state that if he made a mistake in the first instance, in carelessness or whatever else may have caused him to act in the first instance, his prompt knowledge that there was no basis and an immediate and total release instead of it being in such a defense to the defendants is a common law liability to the --

THE COURT: I have prepared my charge on this point, and I intend to charge that: In order for Mr. Bellows to prevail on this question, the question of taking into custody, to which there is a good faith defense, I mean, a defense asserted of good faith, as distinct from the questions of application of physical force to which there is no such defense asserted, but merely a general denial of the events actually occurring, I will charge as to the question of taking into custody that the plaintiff must establish, by a preponderance of the evidence, or, rather, that the jury must find by a preponderance of the evidence, that the police officers had no reasonable cause to believe or did not in good faith believe that the plaintiff was publicly intoxicated at the time that they took him into custody on the night of July 16, 1972; that they assert that they did have reasonable cause to believe that he was intoxicated; they did proceed in good faith; that the plaintiff asserts that they did not have reasonable cause to believe that he was publicly intoxicated or act in good faith; and that that is established in part by the fact that they released him within minutes after they took him into custody, although there was no change in his condition.

That is what I intend to charge the jury.

MR. ROSEN: This statute that Mr. Greenwald

referred to, after reviewing it several times --

THE COURT: Excuse me, sir. Would you find out if the plaintiff has arrived?

MR. ROSEN: Yes.

THE COURT: That I would like to proceed now with the trial, because all these matters can be taken up at the end of the trial. I do not want to keep the jury waiting.

MR. GREENWALD: I would indicate an exception, I think, to the last part of your charge.

THE COURT: What is that?

MR. GREENWALD: I believe that the fact that they released him within minutes does not negate from the good faith.

THE COURT: I am referring to the fact that that is his contention, Mr. Greenwald.

MR. GREENWALD: Okay.

THE COURT: And it is his contention. And I disagree with you that it may not be evidence in that regard. Of course, it does not establish it.

(In open court; jury present.)

MR. ROSEN: Officer Dainack was on the stand.

THE COURT: Yes, resume the stand, please, Officer.

D E N N I S D A I N A C K, resumed.

CROSS-EXAMINATION

BY MR. ROSEN (CONTINUED):

Q Just focus your attention on yesterday's testimony and if I recall it differently than you said, please indicate it -- I heard you state yesterday in your testimony on direct that you did not hear Mr. Bellows make any request at the time you put him in the car to have his wife or someone call his lawyer; isn't that what you said yesterday?

A I believe I said that.

Q What did you say?

A I don't recall what I said. You'd have to read it back in that section. I don't know.

Q Did you say that in substance, that you did not hear anything?

A I know that he did say something when I put him in the car.

THE COURT: You know it now or you did hear it?

THE WITNESS: I don't recall if I said it, your Honor.

THE COURT: I am getting away from what you said yesterday. When you say that you know he did say something, are you saying that you know it now in the sense that you have learned it since the event occurred, or are you saying

yes, you heard him say it at the time?

THE WITNESS: Yes, I heard him say it at the time.

Q What did you hear him say?

A I heard him call to his friends.

Q To do what?

A He told them to call his attorney.

Q And he made that request at the time when you and Officer Van Houten were helping him into the car, and that he voluntarily entered the car; that is the substance of what occurred and as you described it, right?

A No, he didn't say it at that time.

Q When did he say it, when he was in the car?

A Yes.

Q Or out of the car?

A When he was in the car.

Q The car had doors on it, didn't it?

A Yes.

Q When he was inside the car, he shouted that out?

A Yes.

Q Did he have to holler it from the inside of the car so that you could hear him on the outside of the car?

A I don't believe the door was shut at that time.

Q Whether it was shut or open, whether he was inside or out, one thing is certain, you said he voluntarily went

into the car with the assistance of you and Van Houten, and at the same time he's hollering to his friends to call a lawyer; is that it?

A Yes, sir.

22 Q Yesterday, in answer to a question by the court, you said that Homer Salsbury standing at a distance of about half the length of this court indicated to you and pointed out Vincent Bellows as the person who was hassling him or arguing with him; didn't you say that in substance?

A I said that he was -- Salsbury pointed him out and said he was one of the people involved.

Q You saw the person whom Salsbury pointed out to be Vincent Bellows?

A Yes, I did.

Q And there is no question at all about that, is there?

A No.

Q When you went back shortly thereafter, you went directly to Vincent Bellows, right?

THE COURT: You mean when he was in the car cruising around or what?

MR. ROSEN: He went into the telephone booth, he spoke to Homer Salsbury, and he allegedly points out Mr. Bellows. He goes away in the car, turns it around, and

comes back and goes directly to Vincent Bellows.

Q Is that right?

A No, sir.

Q What is wrong about it?

A We were just driving through town and I happened to see Vincent Bellows sitting.

Q Didn't you go back there directly to question him?

MR. GREENWALD: Objection.

THE COURT: By "directly," do you mean purposely?

MR. ROSEN: Yes.

MR. GREENWALD: He has answered it.

THE COURT: I will sustain the objection. Besides which, the purpose of today's further cross-examination was only in relation to the document that you had seen.

MR. ROSEN: I will get to that, sir.

THE COURT: Please get to it now. We have finished your cross-examination on other matters.

Q Did you ever say that Homer Salsbury never pointed out or indicated Vincent Bellows as the person with whom he had any argument or trouble?

A Rephrase it.

MR. ROSEN: Would you read it to him? I do not

wish to rephrase it.

THE COURT: Please read it back.

(Question read.)

A He did point him out.

THE COURT: The question is, did you ever say it at any other time that he did point him out?

THE WITNESS: No, I didn't.

Q You are sure of that?

A Yes.

Q You are an experienced police officer, are you not, Trooper?

A Yes.

Q And you have been in other cases, haven't you?

A Yes.

Q In the night of July 16 you say you discharged Vincent Bellows. He looked at your name on your chest when he left the car, didn't he?

A Yes, he did.

Q Then you were called down the next day in the investigation of what took place that night, weren't you?

A Yes.

Q You appeared before Lieutenant Minihan, the investigating officer who was trying to find out what happened the night before, right?

A Yes.

Q Did you in that examination before Lieutenant Minihan, sworn to July 20, 1972 -- the hearing was held on July 19, 1972 -- make the following statement to the following question --

MR. GREENWALD: At this point I think, if you do not have a copy, I think he should just for assistance --

THE COURT: Okay.

MR. ROSEN: I beg your pardon?

THE COURT: He wishes to furnish the copy of the transcript to the witness.

MR. ROSEN: In fact I would like him to read it out loud.

THE COURT: Never mind that. What page?

MR. ROSEN: Page 11.

THE COURT: Do you want to read the question and answer that you are referring to, Mr. Rosen?

MR. ROSEN: Yes.

Q Look at page 11, about the middle of the page. The Lieutenant was Lieutenant Minihan, the investigating officer, was he not?

A Yes, sir, he was.

Q I will read you from the question and answer.

"Lieutenant,did the complainant Homer Salsbury,

identify his assailant to you?

"Trooper: No, he did not."

THE COURT: Did you give that answer to that question at the hearing?

THE WITNESS: Yes, I did.

Q Yesterday and today you have repeated the statement that Homer Salsbury pointed out Vincent Bellows. How do you explain the difference between your sworn answer in this investigation of the acts of the night in question and what you testified here?

A Well, sir, by identification. Homer Salsbury did not give me Vincent Bellows' name. He pointed him out. "That's the person." That's not an identification to me.

Q The word was "identified."

A I've already explained that's not an identification to me.

Q In other words, if I say: That man did it, you are not identifying him; is that it?

A Not as far as by name.

Q You had his name. He said his name was Vincent Bellows.

A This was after Vincent Bellows approached me and told me his name.

Q Let us get this. You are telling this court and

jury that when Salsbury points him out and says, "That's the man," that is not an identification; is that your position?

MR. GREENWALD: Objection; he has answered the question.

THE COURT: Sustained.

MR. ROSEN: That is all.

THE COURT: Any further questions?

REDIRECT EXAMINATION

BY MR. GREENWALD:

Q I would refer you to page 3, the bottom of your statement previous referred to. What did you state?

MR. ROSEN: Where?

THE COURT: You cannot use a document of this kind for the purpose of establishing an inconsistency.

MR. GREENWALD: Yes.

Q Were you asked the question:

"Did you have any conversation at this time with any of these people"?

A Yes, I was.

Q What was your answer?

MR. ROSEN: Which is he reading?

MR. GREENWALD: Page 3, the bottom of the statement, the last lines.

THE COURT: Do you remember what you said?

THE WITNESS: I have to refresh my memory from the statement?

THE COURT: Please refresh your memory and then tell us.

THE WITNESS: It says "Yes, I had" --

THE COURT: We all know what it says. The question is, do you remember what you said? Does it refresh your recollection as to what you said?

THE WITNESS: Yes.

THE COURT: What did you say?

THE WITNESS: Yes.

THE COURT: What did you say?

THE WITNESS: I said that I did have a conversation with Homer Salsbury and that he identified one of the people that was standing in the group that harassed him.

THE COURT: Did you use the word "identify"? You just told us a little while ago --

THE WITNESS: Well, that he said that one of the people in the group.

THE COURT: I see.

Q How did he do this, how did Homer Salsbury do this?

A He pointed to Mr. Bellows.

MR. GREENWALD: Thank you.

No further questions.

THE COURT: Thank you very much, Trooper.

(Witness excused.)

MR. GREENWALD: Your Honor, I have a matter of law. I do not know if you want to send out the jury or not.

THE COURT: Something that must be discussed at the moment, or can it wait?

MR. GREENWALD: It has to do with some of the prior testimony on cross-examination.

THE COURT: If it is already in the record, let us wait until later and we can discuss it, and if I think it is something that should be excluded, if that is what you have in mind, I will advise the jury. It does not make any difference if I do that now or a little later.

MR. GREENWALD: Okay.

At this time the defendants call Brian Van Houten.

B R I A N A. V A N H O U T E N, a defendant herein, called as a witness on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREENWALD:

Q Can you give us your residence?

A Swan Lake, New York.

Q By whom are you employed?

THE COURT: Swan Lake?

THE WITNESS: Yes, sir.

THE COURT: There really is a place by that name? Where is it located?

THE WITNESS: Just outside of Liberty.

THE COURT: Thank you.

MR. ROSEN: Township of Liberty, Sullivan County.

23 Q By whom are you employed?

A New York State Police.

Q In what capacity?

A As a trooper.

Q For how long have you been so employed?

A Just about 8 years now.

Q Were you a trooper on July 16, 1972?

A Yes, I was.

Q What were your duties at that time?

A I was assigned the A line, which is the 11 to 7 shift, normal patrol duties.

Q What area were you patroling?

A It would be the northern half of Sullivan County.

Q Any idea how big an area that is?

A Probably about four or five hundred square miles.

Q Were you working that shift with another trooper,

anyone?

A Yes, I was.

Q Who were you working it with?

A Trooper Dainack.

Q What happened after you started out on patrol?

A Shortly after we started patrol, we received a complaint to proceed to Livingston Manor.

Q And did it tell you anything else, the complaint? I mean, the report that came over the phone.

A Well, it was regarding an alleged assault.

MR. ROSEN: You have got a complaint. I object to anything else.

THE COURT: Just tell us what you did as a result of it.

A We proceeded to Livingston Manor at the corner of Main Street and Old Route 17.

Q What did you do there, see there?

A We pulled up to the curb. I had turned around.

THE COURT: You pulled up to the curb, you say?

THE WITNESS: We turned around and pulled up to the curb; the curb -- with Trooper Dainack on the curb side.

THE COURT: Can you jury hear the trooper? They are not hearing you.

Q By the way, what was your position in the car?

A I was driving the vehicle.

Q Let us continue with what happened.

A At that time the complainant, Homer Salsbury, spoke with Trooper Dainack on the passenger side of the car.

THE COURT: You mean after you pulled up to the curb?

THE WITNESS: Yes.

A And I didn't hear the whole conversation, but it had to do with the alleged assault.

Then I saw the complainant point over towards the bridge where Mr. Bellows was sitting, on the bridge over there.

THE COURT: This is the first incident that Trooper Dainack testified about? This is not at the time when you pulled up in front of the stoop?

A No, sir.

THE COURT: Of Mr.Bellows'?

THE WITNESS: No, this is the original time.

THE COURT: All right.

A Then right after, Mr. Salsbury pointed over to Mr. Bellows. Mr. Bellows came over to the car and said loud enough for me to hear his name, "My name is Vincent Bellows. I don't have to tell you anything more."

He made a remark about the muffler on the car and

turned around and walked away.

Q Could you please keep your voice up?

What happened at that time, to your knowledge and observation?

A Right about that time the complainant's father, Mr. Salsbury, I believe, came, arrived at the corner, and there was a little confusion as to what was going on at that time.

Q Were you out of the car at any time?

A No, I remained in the car.

Q Did you hear anything or what was going on about the confusion.

MR. ROSEN: May I object to the form of the question, sir.

THE COURT: Sustained.

Q What did you do or see?

A Well, Trooper Dainack got out of the car and spoke with Mr. Salsbury and the complainant Homer. And he spoke -- I couldn't hear the conversation -- but he cleared it up, got back in the car and we went -- resumed normal patrol there.

Q After resuming normal patrol, what happened?

A Well, we proceeded up to where the firemen's field day was taking place, and checked the area there.

They were closing up, and on the way back down through town, heading in the same direction of the original complaint, Trooper Dainack asked me to stop the car.

He got out of the car --

Q Excuse me. You did stop the car?

A Yes, I did.

Trooper Dainack got out of the car and walked over to a stoop where there were three people sitting, one of them being Mr. Bellows, and he engaged in conversation which I didn't hear. I can hear the voices but I couldn't hear the words.

And all of a sudden the conversation became louder and I was far enough away where I still couldn't hear what was going on. But the two people on either side of Mr. Bellows stood up, and I felt that possibly Trooper Dainack was going to have a little trouble, and I exited the car and walked over to the stoop.

At this time I heard Trooper Dainack telling Mr. Bellows to get in the car.

Mr. Bellows asked if he was under arrest. He refused to get up off the stoop at that time.

THE COURT: What did Trooper Dainack answer when Mr. Bellows asked if he was under arrest?

THE WITNESS: I don't recall at this time what

the answer was.

THE COURT: Go ahead.

Q Did you say anything to Mr. Bellows?

A At that point? Yes, he had asked several times -- I don't remember whether it was before we got him up or after we helped him up off the stoop -- he did ask again whether he was under arrest.

And I had said, "Yes, you're going back to the Ferndale Station so that we can identify and take your fingerprints."

Because he had offered no identification other than his name. He wouldn't tell us anything else.

And we walked over to the troop car with him, and we stood by there for a minute arguing, and he yelled over to his friends, "Tell my wife to call my attorney."

And then he got in the car and we both got back in the car and we headed back toward the barracks, by Old Route 17.

Q Did you use any force in him getting up and getting to the car?

A No, sir, other than just holding his arm and helping him up off the stoop, and then he walked over with us.

Q What did you do then?

A Well, I drove the car down toward the barracks by Old Route 17, which passes the Livingston Manor Airport and intersects Route 17, which would be the fastest way to get to the barracks.

And while we were driving, Trooper Dainack was questioning Mr. Bellows as to his identity, and instead of the belligerent attitude which he had to begin with, he broke down and started crying and said, "You guys never give anybody a break." And I don't recall the rest of the conversation there, but then Trooper Dainack asked him where he lived, what his date of birth was, and after we had the date of birth I radioed in for a mile check, which, for the jury's benefit, is to find out if we have any warrants for anybody, if they are wanted by any police department within the United States. And that came back as a negative check.

And about the same time we had had a complaint we received to proceed to Swan Lake to take care of the problem of fireworks out there.

Q By the way, let me go back with the stoop. Did you notice anything about Mr. Bellows' condition?

MR. ROSEN: May I object to leading the witness, your Honor?

THE COURT: Overruled on that question.

A Well, his eyes were bloodshot and his speech was slurred, noticeably, and he had this -- still had the belligerent attitude.

Q As an experienced police officer, what did this normally indicate to you?

MR. ROSEN: I object to the form of the question; leading and suggestive.

THE COURT: I will leave it to the jury to reach their conclusion on the basis of the facts presented by the witness.

A Well, the condition Mr. Bellows was in at the time

THE COURT: No. I said I will leave it to the jury to decide.

THE WITNESS: Oh, I'm sorry.

MR. GREENWALD: Can he answer the question?

THE COURT: You can say what you yourself thought.

MR. GREENWALD: Okay.

Q What you yourself thought.

A I felt he was in an intoxicated condition.

MR. ROSEN: I did not hear that answer.

THE COURT: He felt he was in an intoxicated condition.

Q Getting back to the car, how far do you -- you

were driving -- how far do you think you went in the car, or do you know?

A Well, it's only a few hundred feet up to the corner where we made the turn up to Old Route 17. The caution light just beyond where I turned around is maybe a half a mile, a little more, away from the intersection.

THE COURT: So, putting that altogether, how long do you think you drove Mr. Bellows around?

THE WITNESS: The time or the distance?

THE COURT: The distance.

THE WITNESS: Probably a mile and a half, maybe two miles, the most.

THE COURT: How long in time?

THE WITNESS: Just an estimate of five to ten minutes.

Q While you were in the car, did you see or hear any indication of a person being struck or any cry?

MR. ROSEN: I must object to the form of the question; leading and suggestive.

THE COURT: Overruled.

A No, I did not.

Q You have testified to what you heard in the car. Did you hear anything else in the car further while you were driving?

A Not other than my radio. Nothing unusual, no.

Q Where did you end up driving?

A Just beyond this caution light. After we had gotten the information which we couldn't originally get on the street, we decided we've got enough information to make the identification. He's not wanted, and Trooper Dainack and I decided to turn around because we had this other complaint, and we took him back down the same street to the intersection, made the right turn, and dropped him off by the new bank in Livingston Manor.

Q Did you make -- or in conjunction with Trooper Dainack -- make any determination as to the state of his condition?

A Well, it didn't change what I felt was an intoxicated condition, but we felt after his change of attitude that we wouldn't have any more trouble where he would endange himself or anyone else that night.

Q Is that a part of the offense of public intoxication?

A Yes, sir, it is.

Q Can you describe -- did you take part in letting Mr. Bellows out of the car?

A No, sir. I remained in the driver's seat.

Q Did you hear Mr. Bellows complain about being

struck or hit at any time?

A No, sir.

MR. GREENWALD: No further questions.

CROSS-EXAMINATION

BY MR. ROSEN:

Q Officer Van Houten, you did not hear, then, anything that occurred or is alleged to have occurred between this party known as Homer Salsbury and Officer or Trooper Dainack?

A Not a complete conversation, no, just here and there.

Q How far were you when you claim that Homer Salsbury pointed to the bridge where Mr. Bellows is supposed to have been?

A Mr. Salsbury was standing right by the passenger door of the car speaking to Trooper Dainack.

Q Yes, but where was the car located with respect to the bridge? How many feet away?

A It's almost right next to it. We were by the telephone booth. The bridge is just beyond the telephone booth.

Q That is a dark spot, isn't it?

A It's lit up in that area there.

Q Lit up. There are road lights there, but we are

talking of the precise spot where you claim that Mr. Bellows was sitting.

THE COURT: Are you asking whether it was dark where Mr. Bellows was sitting?

MR. ROSEN: Yes.

THE COURT: Was it?

A There was enough light to see him, that's all I can say.

Q How many people were sitting there?

A I only saw Mr. Bellows.

Q I beg your pardon.

A I only recall seeing Mr. Bellows at this time.

Q Nobody else?

A No, sir.

Q He was sitting there all by himself?

MR. GREENWALD: Objection; he has answered the question.

THE COURT: He is cross-examining. I will allow a little latitude.

A At this time I saw him. When Mr. Salsbury pointed, he was the only one sitting there.

Q What did Mr. Bellows do?

A He came over and told Trooper Dainack his name, he told him he didn't have to talk to him any more; he made

a remark about the muffler on the troop car and walked away.

Q This all occurred at the first alleged meeting between you, Dainack and Bellows, right?

A Yes, sir.

Q And Bellows walks over to the car, a distance that you indicated from the bridge to the car, walks over to the car at the request of Dainack, gives him his name. He is standing erect, isn't he?

A I don't recall now, sir.

Q How did Bellows walk from the bridge?

A I would assume erect. I would have had to bend down to see it from the troop car.

Q Did you see it?

Well, you said you noticed him. Through the glass, I presume?

A When he pointed over there, I saw Mr. Bellows.

Q All right. Now, you are looking in the same direction. Didn't you see how Bellows approached the car?

A I didn't see him when he was approaching the car. I was sitting in the driver's seat watching the area. I was not directly involved with the complaint.

Q Then how did you see Mr. Salsbury point in the direction of Bellows if you were facing, say, in the opposite direction?

A I was sitting next to Trooper Dainack in the car.

Q Assuming you were. Now, I am looking at you and he is looking at you. We both can see you, can't we?

A Yes, sir.

Q Well, you were sitting in the car and Dainack was sitting in the car, and you were looking at Homer Salsbury, who was supposed to have pointed in the direction of the bridge, right?

A Yes.

Q And you did not see Bellows come back from the bridge in your direction, right?

A I don't recall watching him walk from the bridge back.

Q He was the only person, you said, at the bridge, and he was walking towards the car, unless he crawled on his hands and knees?

MR. GREENWALD: Objection; argumentative.

THE COURT: Sustained.

Q Let us get it clear. Were you looking in the direction of the bridge when Homer Salsbury allegedly pointed in that direction at Bellows?

A As he told Trooper Dainack --

Q Please, sir. You were looking in that direction?

A Yes, sir.

Q You did not have your back to him, did you?

A No, sir.

Q All right.

Now, after he points in the direction of Bellows, Bellows approached the car, didn't he?

A Yes, sir.

Q Okay.

THE COURT: Wait a minute. Just hold it.

How do you know he approached the car?

THE WITNESS: Because when I turned and looked, he was standing --

THE COURT: I am confused by this, too. Was the front of your car pointed towards the bridge or at what angle?

THE WITNESS: No, sir. It was in front of the bridge. In other words, I would have had to look over my shoulder to the back window.

THE COURT: It was parallel to the bridge?

THE WITNESS: Yes.

THE COURT: And some distance?

THE WITNESS: Yes.

THE COURT: Are you saying when Salsbury pointed to Bellows, you looked over there but after you saw Bellows, you started looking at something else, and later on you saw

Bellows near the car?

THE WITNESS: Right, because Trooper Dainack was handling the complaint. I was just sitting in the driver's seat.

THE COURT: Speak louder so the jury can hear you.

MR. ROSEN: I do not hear you.

THE COURT: Let the reporter repeat your last answer.

(Answer read.)

Q Let us get that clear. The car was facing in the direction of Bellows at the bridge, as you said, right?

THE COURT: He said it was parallel to the bridge, not at right angles to the bridge.

MR. ROSEN: Well, parallel, sir -- if I am standing here, parallel, looking towards the bridge, wouldn't that be looking towards the bridge?

THE COURT: No. That is at right angles, what you just described.

MR. GREENWALD: I am objecting. I think the court or anybody could take judicial --

THE COURT: What are you objecting to?

MR. GREENWALD: That the car generally has windows in all directions. He may turn around.

THE COURT: I do not think I need to take judicial

notice of that. I imagine that most of the people on the jury know there are windows in all directions. I was simply trying to position the car vis-a-vis the objection.

The objection is overruled.

Q Mr. Van Houten, you told the court and jury that you saw Homer Salsbury point in the direction of Bellows, did you not?

A Yes, sir.

Q That would mean that when you saw that you must have been seeing in the direction of Bellows?

A That's correct, sir.

Q And he was ahead of you a certain distance, wasn't he?

A You mean a distance from me?

Q Of course.

A Yes, sure.

Q When Bellows is requested, or whatever the reason was, turns and goes to your car, you are still facing in his direction, aren't you?

THE COURT: But he turned his head, he said.

Q What were you doing at the bridge except to look at Bellows?

A I was sitting in the troop car.

Q Of course you were. It was late at night, there

was no other reason there, you are talking to Homer Salsbury, he is pointing in the direction, and you are not paying attention; is that it?

A I was not talking to Homer Salsbury.

Q Your partner was.

A Yes, sir.

Q Right. And you were in the car assisting your partner, right?

A I wasn't --

MR. GREENWALD: Objection.

THE COURT: Like it or not, he was not looking that way is what he says.

MR. ROSEN: I think the jury should have a very clear understanding that here are two officers doing one thing, and one of them is not paying attention.

MR. GREENWALD: Objection.

THE COURT: You will be perfectly free to argue that, but there is no point in cross-examining ad infinitum on the point.

MR. ROSEN: All right.

Q Let us start from there. There comes a time when Bellows comes back from the bridge and stands at the car. And did you see him there?

A At the car?

Q Yes.

A Well, part of him, yes.

Q What part didn't you see?

A I couldn't see his head from where I was sitting.

Q Because he was taller than the car; isn't that right?

A Yes, sir.

Q So then he must have been standing erect, wasn't he?

A I would assume so, yes.

Q And he got from the bridge to the car on his own power, didn't he?

A Yes, sir.

Q You did not help him, did you?

A No, sir.

Q Dainack did not help him, did he?

A No, sir.

Q So the only thing we can infer is that Bellows came from the bridge under his own walking power and stood next to the car erect because you could not see his shoulders and head?

A Yes, sir.

Q And then he said in a clear voice --

MR. GREENWALD: Objection.

MR. ROSEN: Why?

MR. GREENWALD: I do not think there was any such testimony.

THE COURT: Let us hear what he is going to say. I do not know how you can object before something is stated.

Q You heard Mr. Bellows said, "My name is Vincent J. Bellows and I don't have to tell you anything more," and turned around and walked away; you said that, didn't you?

A Yes, sir.

Q In order to say that, you had to hear him say it, didn't you?

A Yes, sir.

Q So there is no question about it, is there?

A That I heard him?

MR. GREENWALD: Objection.

Q About what?

THE COURT: That he said that. No, there is not, Mr. Rosen. Neither witness has ever denied it.

Q Let us go to the next step.

While you were in the car, you and Dainack then knew that Bellows had refused to give you any information about himself other than his name; isn't that true?

A That's correct, sir.

Q And you made up your mind you are going to go back

there for him, didn't you?

MR. GREENWALD: Objection.

THE COURT: Overruled.

A No,sir.

Q How long did it take before you turned around and went back to the stoop on which Bellows was sitting?

A However long it took us to check out the firemen's field day and return.

Q I was not there. How long was it?

A Maybe five, ten minutes at the most.

Q Five or ten minutes. When you got there in five or ten minutes, you saw Bellows sitting on the stoop?

A I didn't originally see him, but he was there, yes.

Q There came a time that night when you did see him on the stoop, didn't you?

A Yes, sir.

Q Did you and Dainack or did Dainack in your vision and sight go over to the stoop and pick up and help pick up Mr. Bellows and help him into the car?

A Helped him to the car, yes, sir.

Q He is the same Bellows who a few minutes before walked from the bridge to the car standing erect and told you he would not give you any more information than his name;

isn't that so?

A That's correct, sir.

Q Let us take the automobile itself, the police car. Who put Bellows into the car?

A He got into the car himself.

Q When he got into the car itself, you said you hear him say, "Have someone call my lawyer," didn't you, words or substance to that effect?

A Yes, sir.

Q Was that a strange remark for a man in the custody of police officers to yell for his lawyer?

MR. GREENWALD: Objection.

THE COURT: Sustained.

Q Did you consider it strange?

MR. GREENWALD: Objection.

THE COURT: Sustained.

Q Did it have any bearing upon you as an individual that a man you said was intoxicated gave an answer,"I want my lawyer" the moment you took him?

MR. GREENWALD: Objection.

THE COURT: Overruled.

A Yes, it did seem strange.

Q You know what an intoxicated man is?

A Is that a question?

Q Do you know?

A Oh, do I. Yes, I do.

Q And in this case you heard Officer Dainack say that he went over to the stoop and physically assisted Bellows to get up and go to the car; you heard that, didn't you?

A You have to repeat the question.

Q Did you hear Mr. Dainack testify here in court that he went over to the stoop and helped Mr. Bellows up to go to the car?

THE WITNESS: Yes, sir.

Q He is the same Bellows who walked --

THE COURT: Yes, he is the same Bellows.

Q And in the same condition, wasn't he?

A Yes, sir.

THE COURT: You have made that point, Mr. Rosen.

Q After Bellows is in the car and after he has shouted for a lawyer, you took him away about a mile or two in the direction of the airport in Livingston Manor, didn't you?

A The direction of the barracks, yes.

Q You rode about a mile, a mile and a half or two miles at the most?

A Well, to the blinker light, if you're familiar

with that.

Q Oh, I am very familiar with it.

THE COURT: The jury is not.

A Half a mile, three quarters of a mile down, yes.

THE COURT: Have any of you seen the blinker light in Livingston Manor?

MR. ROSEN: I am about the only one who has.

26 Q You said you drove at most two miles?

A That would be about it.

Q You were driving. How fast were you driving?

A I don't recall. Not very fast at the time.

Q Well, you told Mr. Bellows, as you say, "I told him, 'You're under arrest,'" or Dainack said, "You're under arrest; we're going to take you to the barracks, we're going to fingerprint you and book you"; you said that, didn't you?

A I just said, "We are going to fingerprint you."

Q Do you fingerprint people without booking them?

A No, not normally.

Q But in this case you were going to do it, weren't you?

A Without booking him? No, sir.

Q Well, you were going to take him there to book him, you said that, and fingerprint him and photograph him, weren't you?

A Not photograph him.

MR. GREENWALD: Objection.

THE COURT: Overruled.

Q The fact is that after you took him in the car and made those statements and he made the demand for the lawyer, you changed your mind and let him out within about five minutes or less, right?

A Well, he answered the questions that he didn't answer on the street.

THE COURT: Wait a minute. What questions did he answer that he did not answer on the street?

THE WITNESS: His residence, date of birth, that he worked in the town.

Q Tell the court and jury what the date of his birth had to do with whether he was drunk or not?

A It had nothing to do with whether or not he was drunk or not, no.

Q Let us take his residence. What has his residence got to do with whether he was drunk or not?

A Nothing.

Q So if he told you his name and address and his residence, it would have made no difference; he was either drunk or he isn't, right?

A That's correct.

Q And you suddenly changed your mind and let him go?

MR. GREENWALD: Objection as to the characterization.

THE COURT: Overruled.

Q You let him go, didn't you?

A Yes, sir.

Q Thereafter, practically the same night, a complaint was made against you for what you did that night, right?

A There was a complaint made, yes.

Q You testified in the investigation, did you not?

A I did.

Q Did you sign a statement?

A Yes, sir.

Q And counsel have that statement here today?

A You have to ask counsel. I believe so.

MR. GREENWALD: Yes, we do have that statement, but I, once again, indicate that this case has been pending for several years --

THE COURT: Mr. Greenwald, that may be. Is that a question of whether we should have a delay? It does not mean the statement should not be delivered.

MR. GREENWALD: Okay, I am prepared. I do not

think we should have a recess for this purpose.

THE COURT: I won't allow a recess. I will allow two or three minutes to look over the statement; that is all.

(Pause.)

THE COURT: All right.

Q In the investigation that was made, and in which you were called to testify before the investigating officer, you made a statement and subsequently verified it on July 20, 1972.

Did you at any time in that statement tell the investigating officer what you said here today, that Vincent Bellows was crying and said you did not give anybody or never give anybody a break?

A I don't believe I did, no.

Q When for the first time did you decide to tell that to the court and jury when you did not recall it on July 19, 1972, two and a half days after the incident?

THE COURT: Let us leave the latter part of the question out. You want to ask the first time --

Q When for the first time did you decide to inject that part?

MR. GREENWALD: Objection about the injection.

THE COURT: Yes. I will sustain the objection to the form of the question.

Q When for the first time did you make that statement about the crying?

A On record?

THE COURT: Yes.

A Right here today.

Q Your recollection of the events of the night in question were better on July 19, 1972, than they are today; is that a fact?

A I would assume so, yes.

Q You made this statement under oath, right?

A Yes, sir.

Q How far would you say the car you were in was from the bridge where you claim that Bellows was sitting?

A Maybe from here to the wall over there. Where the jurors are sitting

THE COURT: About 25 feet?

THE WITNESS: I would say 25, 30 feet, yes.

Q Was the police car at the telephone booth at the time?

A Yes, in that vicinity.

Q Were you asked in the investigation [illegible] in your testimony in the investigation, which you verified July 20, 1972, the following answer to the following question:

"LIEUTENANT:" -- that was Lieutenant Minihan, the

investigating officer -- "What was the exact location where you saw Mr. Bellows initially?

"TROOPER: He was sitting on the bridge not more than 10 feet from the telephone booth"?

Now, you made that answer, did you not?

A Yes, sir, I did make that answer.

Q So he was clearly right ahead of you, almost on top of the car when you saw him in the first place, right?

A I couldn't recall the distance from the curb to the -- I don't remember the exact location of the car.

Q That was your testimony given on July 19, 1972, and sworn to July 20, 1972, three days, four days after the incident? And today you say it was 25 feet away. Which is true?

A Well, I've had a chance to observe the location since then. I hadn't worked up in that area that often before.

THE COURT: Being reminded that you testified 10 feet on July 19, what do you at the moment believe the distance actually was?

THE WITNESS: I would say about 25 feet.

Q At the time when you claim that Bellows allegedly got into the police car voluntarily, you told him you were going to take him to the state police barracks to be finger-

printed, did you say to him or did he ask you, "Am I under arrest"?

A He asked that several times, yes, sir.

Q This is the person you arrested for intoxication, who asked you several times, "Am I under arrest?" Right?

A Yes, sir.

MR. GREENWALD: Objection.

THE COURT: Overruled.

MR. ROSEN: That is all.

MR. GREENWALD: Just a few questions on direct.

THE COURT: Please do not come up.

MR. GREENWALD: I won't come up.

REDIRECT EXAMINATION

BY MR. GREENWALD:

Q At the stoop, how would you characterize Bellows from what you saw?

MR. ROSEN: Objected to.

THE COURT: He has already given the testimony. He said what the symptoms were and he said what his own impression were.

Q You got out of the car, you already testified to that?

A Yes, sir.

Q Let me just ask, and I may have asked this before:

Why did you and Trooper Dainack let Vincent Bellows go?

A He identified himself, his name, address, date of birth, which he hadn't done on the street.

Q Was there -- did you have any participation making a further determination as to his state of intoxication?

A As far as I was concerned, he was still intoxicated, but not to the point of endangering himself or others, which would be a requirement of the law.

Q Referring to the statement that has been read to you, do you recall the form of that statement?

THE COURT: I do not think it was a statement. It was a transcript that appeared to be of questioning.

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MR. GREENWALD: Yes, it was question and answer.

Q You were asked questions?

A Well, in other words, I was under investigation of this incident.

THE COURT: But was the method by which your information was taken a question and answer type?

A It was a question and answer type, yes.

Q Were you ever asked the question whether Vincent J. Bellows was crying?

A No, sir, I was not.

Q Were there any questions that you recall that would have recently called for that type of answer?

A Not at that time, no,sir.

Q Did it seem relevant to you at that time?

A No, sir.

MR. GREENWALD: No further questions.

MR. ROSEN: If your Honor pleases, I would like to ask one or two questions of Trooper Dainack that I had omitted on cross-examination with respect to this crying. I had intended to --

THE COURT: Hold it just a minute.

Are you finished with this Trooper?

MR. ROSEN: Yes, I am.

THE COURT: We will take a morning recess at this time and afterward you can recall Trooper Dainack.

MR. ROSEN: Fine.

(Witness excused.)

(Recess.)

(Jury present.)

THE COURT: Mr. Rosen, I would ask Trooper Dainack to resume the stand, please.

D E N N I S D A I N A C K, resumed.

CROSS-EXAMINATION

BY MR. ROSEN CONTINUED:

Q Trooper Dainack--

THE COURT: This is a limited re-examination, you understand.

MR. ROSEN: Yes. I only have one or two questions.

Q -- in this examination in connection with the investigation on Vincent Bellows before the State Police Department, you gave certain testimony. Is it not a fact that you never mentioned in that testimony that Mr. Bellows was crying, never mentioned he said, "You fellows never give anybody a break"?

A Yes, sir.

Q When was the first time that you mentioned that fact?

A Here in court.

Q That was yesterday?

A Yes, sir.

MR. ROSEN: That is all.

THE COURT: Do you wish to ask any questions?

MR. GREENWALD: Yes.

REDIRECT EXAMINATION

BY MR. GREENWALD:

Q I think you heard my prior questions. What was the form of this examination?

A It was a question and answer examination.

Q Were you ever asked whether Vincent Bellows was

crying or any question that would reasonably call for that type of answer?

A No, I wasn't.

Q Did you consider it relevant to any of the questions you answered?

MR. ROSEN: I must object to what he considered relevant. The fact is he did not make the statement.

THE COURT: Overruled.

Did you consider it relevant?

A I lost that somewhere.

THE COURT: Would you read back the last question, please?

(Question read.)

A Yes.

Q Excuse me. What was your answer?

THE COURT: "Yes" was the answer.

THE WITNESS: I'm sorry, I might have misunderstood the question, your Honor.

THE COURT: Did you consider the fact that he had cried in the car, according to your testimony, relevant to the questions that you were asked on investigation?

THE WITNESS: Not at the time of the original statement.

THE COURT: Okay.

MR. GREENWALD: No further questions.

THE COURT: Thank you, Trooper.

(Witness excused.)

THE COURT: Mr. Greenwald?

MR. GREENWALD: At this time I call Harold Madison to the stand.

H A R O L D E. M A D I S O N, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREENWALD:

Q Mr. Madison, can you tell us your address?

A Livingston Manor, New York.

Q By whom are you employed?

A I'm employed by the Town of Rockland as a constable and I'm also self-employed.

Q So your position of constable is of what nature?

A Of the Town of Rockland, which includes Livingston Manor and Roscoe.

Q Is that a full time position?

A It's a part time position.

Q Might I ask, what are your duties as a town constable?

A We patrol, we answer complaints, and on occasions, like when the firemen have their field days, we have to patrol at that time.

Q What were you doing on the evening of July 16, 197

A We were patrolling-- they had a firemen's field day there, and there were lots of people. We were patrolling.

THE COURT: When you say "we were patrolling," who else do you mean?

THE WITNESS: I had another fellow with me, another constable. His name is -- Sol Schwartz was with me.

Q On that evening, could you describe your activitie and what you saw and heard?

MR. ROSEN: I must object unless it is related to this case.

THE COURT: We will see.

A Yes, we were at the field day and we had some youngsters come up and say they were having a fight down on the corner, which is in the middle of town.

So Mr. Schwartz and myself got in the car and we drove down to the corner, to the United Cigar Store. It's right on the corner of the block. And it's on the bridge, and the bridge attaches to the United Cigar Store.

When we pulled down the street --

THE COURT: We have heard about a bridge on this

street. What does the bridge go over?

THE WITNESS: Over the Little Beaver Kill.

THE COURT: It is a small stream?

THE WITNESS: It's a small stream, 30, 40 foot across at the most.

THE COURT: All right.

Q Is there anything else at that bridge or United Cigar?

A There's a phone booth there, and that practically sets on to the bridge, the phone booth.

As we approached the bridge, there was three subjects by the phone booth, and one in the phone booth.

THE COURT: By "subjects," do you mean people?

THE WITNESS: People.

A We stopped the car right by the phone booth, which would be the curb is five foot from the phone booth.

Q About what time was this, by the way?

A I really couldn't tell you exactly what time it was. There was so much going on, I really couldn't tell you.

Q Keep your voice up.

A As we got out of the car, the three subjects, they were trying to open the door of the phone booth. And we got out of the car, the three subjects separated, and there was

no more commotion.

In the phone booth was Homer Salsbury. The subjects on the outside were Edward Johansen, David Miller and Vincent Bellows.

Q How did you know these people or subjects?

A I've lived there all my life. I know everyone.

Q What happened then?

A Homer opened the door then. He was inside, with his knees against the door so you couldn't open it.

He opened it then and I asked him if he needed any help.

And he said, "No, I called the state police. They've got the patrol car in the area and they'll be right here."

MR.ROSEN: May I move to strike the conversation he had with Homer Salsbury.

THE COURT: Overruled.

Q Go on.

A And with that I got back into my car, drove to the traffic light, turned around and came up and parked on the opposite side of the street, on the other end of the bridge, so I could observe what was going on at the phone booth.

Q How far away were you from the phone booth?

A At that time, 50 feet.

Q Did you observe anything as you were parked?

A Yes, I did. As I turned around and when I got back on the other side to see what was going on, Mr. Salsbury got back into the phone booth and had his knees against the door again.

Mr. Bellows and Mr. Miller were tearing at the doo trying to get in again.

Q Go on.

A They weren't doing any damage. And the state police were coming right away. We thought he wanted the state police to handle it so we didn't bother with it. He was making a lot of noise, but so was everybody else on the street.

At that time then we had a speeder go out of town, so we turned around and went after the speeder.

Q Did you return, after chasing the speeder?

A Yes, within 10 or 15 minutes. We returned in to town, and when we did there was a patrol car on the bridge and there was two patrolmen, two troopers, in the car, and they were talking to some people on the street.

Q What type of patrol car?

A A state police, a marked state police car.

Q Then did you go any place?

A I went back up to the carnival, the field day up there, and I stayed there for, oh, an hour or so.

And I left, and as I left with my car, I was behind the troop car. They were going back down the street in front of me.

Q About the time period, are you certain about these time periods?

A I really am not after this length of time. I really don't know. It was late.

Q Yes. Could it have been a much shorter period?

A Oh, it could have been 30 minutes, it could have been 15 minutes. I think maybe it was an hour, maybe a half hour. I really don't know.

Q Then what did you do after leaving the carnival?

A The state police patrol car was in front of me. They pulled off by Will Brothers Hardware, which is off on the other end of the bridge from where the phone booth is. They pulled to the curb.

As I went by, I saw David Miller, Vincent Bellows, was sitting on the curb, on the steps, and William Welch was standing up on the stoop.

Q By the way, was this David Miller the same David Miller who was at the phone booth?

A Yes.

Q Banging on it?

A Yes. I passed the patrol car, went down, turned around by the light, and parked on the other side of the bridge facing the patrol car, like I was earlier.

And I saw the trooper get out of the car and go over to Mr. Bellows who was sitting on the steps, and got him up, and they led him like to the patrol car, opened the back door and he got in.

Q Did you see any force applied in this?

A No, none whatsoever.

THE COURT: How far away were you on the other side of the street?

THE WITNESS: At that time I was probably 90 feet.

Q What did you do then?

A I just drove on about my business then. That was the end of it.

The patrol car -- the state police car came across the bridge, made a right and went out towards Liberty on Old 17. That's the last I saw.

Q How did you happen to be at the -- close to the stoop across the bridge -- not across the bridge -- you know, on the street?

A How I happened to be there? Because I was

patrolling the area.

Q You were patrolling, too?

A Yes.

MR. GREENWALD: No further questions.

CROSS-EXAMINATION

BY MR. ROSEN:

Q Mr. Madison, I believe we have met before.

A Yes, sir.

Q On many occasions?

A Yes.

Q In this particular case, as you stated, Homer Salsbury was inside the telephone booth and horsing around with the people on the outside holding the door shut?

MR. GREENWALD: Objection. I think this characterization of what Homer was doing --

THE COURT: Sustained. There was some activity going on.

MR. ROSEN: All right.

Q Homer Salsbury was inside the phone booth bracing the door with his foot, right?

A With his knees, yes.

Q With his knees. You saw that?

A Yes.

Q And as you claim, you saw Vincent on the outside

of the phone booth?

A Yes.

Q How long was Vincent standing there?

A From the time I got there to the time I left following the speeder?

Q Before you got there.

A Before I got there? I don't know how long he was there before I got there.

Q How long was he there when you were there?

A All the time I was there, I would say five minutes.

THE COURT: What was happening? What was going on?

THE WITNESS: They guy was in the phone booth, and he said that these guys are trying to beat him up, and he was trying to hold the door.

THE COURT: Could you hear him say it?

THE WITNESS: He told me that.

THE COURT: When?

THE WITNESS: When I walked the first time over, and he opened the phone booth up, he said, "Never mind, I don't need you. I called the state police."

THE COURT: The jury will disregard the quotation from Homer Salsbury unless he is here to testify and you hear his testimony; otherwise, it is hearsay. Mr. Madison

does not know whether they were trying to beat him up or not.

Do you?

THE WITNESS: No.

Q Did you see Vincent Bellows beat up anybody?

A I didn't see him hit anybody; no, I did not.

Q Was Vincent Bellows standing erect?

A Yes, he was.

Q He was standing at least five minutes outside the phone?

A Yes.

Q He was not sitting down?

A No.

Q He was ambulatory?

A Yes.

Q You know Vince Bellows for many years, don't you?

A Yes.

Q At least 15 years?

A Yes.

Q He is one of the local boys there, right?

A Yes, he is.

Q You saw David Miller?

A Yes.

Q You know David Miller, too?

A Right.

Q He is also a local resident, isn't he?

A Yes.

Q Is it not a fact that he is engaged in a business competitive with yourself?

A He is a clerk there, yes.

THE COURT: What business are you in?

THE WITNESS: Sporting goods.

THE COURT: Sporting goods?

THE WITNESS: Yes.

Q And he has also sold articles to customers that you thought were yours, too?

MR. GREENWALD: Objection.

THE COURT: Overruled.

A What's the question?

Q Miller has been selling competitive merchandise to people who might otherwise have patronized you?

A Oh, yes, sure.

Q Did you ever have any run-ins between you and Miller?

A A couple of years ago, yes, we had some words.

Q It would be fair to say that you and Dave Miller are not friendly?

A We're not enemies.

Q Well, you would not shoot him, but at the same time you would not exactly go to tea with him; isn't that so?

A That's right.

Q When Homer made a complaint to you, he told you he had called the state police, and --

A He didn't make the complaint to me.

Q I know he did not. And you said, well, I went away because we were not concerned; he was going to leave it to the state police, right?

A Yes.

Q What did you go back for?

A I didn't. I parked on the other side of the street and watched.

Q I know. What interest did you have, Mr. Madison, to go back there and watch?

A I wanted to see what was going on. I wanted to see if the telephone booth was damaged, who done it.

29 Q Well, you were right there. If it was being damaged, why didn't you stop what was going on?

A It wasn't damaged.

Q Why didn't you stop what was happening if you thought it might be damaged?

A The man didn't want my help. He wasn't interested at all.

Q But you came back and stayed 90 feet away, right?

A The first time I was back I was 50 feet away.

Q And the seond time was 90 feet?

A That's when I was on the other side of the bridge.

Q You were 90 feet away. That is not a well lit area, is it?

A Oh, yes, sir.

THE COURT: Which place are you talking about?

MR. ROSEN: Where he was standing 90 feet away.

THE COURT: Let us identify it.

MR. ROSEN: It would be impossible, sir, because it is a --

THE COURT: Let us identify the episode that Mr. Madison is talking about.

Q Let us take the 90-foot position. You were standing 90 feet away at approximately what hour of the night.

A Around 12 o'clock I would say.

Q It was dark, wasn't it?

A Yes.

THE COURT: We are now talking about the events which took place at the stoop where Mr. Bellows lived; is that right?

THE WITNESS: Yes.

THE COURT: We have jumped from the phone booth.

Q About how long in time after you saw Mr. Bellows outside the phone booth did you see him on the stoop?

A It could have been anywhere an hour, 45 minutes, when he was on the stoop.

Q That is the time you saw the police pick him up, right?

A Yes, that's right.

Q You are sure of that, are you not?

A I don't know exactly by minutes or anything. I would say 45 minutes; it could have been a half hour.

Q So there was a time lapse of an hour, approximately?

MR. GREENWALD: Objection. He is characterizing, I think.

THE COURT: Overruled. He is trying to get the witness to a specific --

Q There was a time lapse of about an hour from the time you saw Vincent Bellows at the phone booth to the time that you saw Vincent Bellows on the stoop with the state police helping him get up, right?

A It could have been anywhere from an hour to a half hour.

Q It would not have been five minutes, ten minutes, would it?

A No.

Q Mr. Madison, when for the first time did you know you were going to be a witness here today?

A 8:30 p. m. yesterday. I knew I was going to be here.

Q Who called you?

A Sunday afternoon I was called. I was called Sunday afternoon.

Q Did you get a subpoena?

A No, I did not.

Q You were sort of a last-minute witness, right?

A Yes, I would say so.

Q In the Hubert Foster case, you also became a last-minute witness, didn't you?

MR. GREENWALD: Objection.

THE COURT: Sustained.

Q You were also a witness in the Marshall --

MR. GREENWALD: Objection.

THE COURT: Let us have a discussion about this at the side bar. I do not know enough about it to be able to rule. Come over, please.

(In the robing room.)

THE COURT: Mr. Rosen, what is it you are trying to bring out?

MR. ROSEN: Should I say it bluntly?

THE COURT: Yes.

MR. ROSEN: This man, in my opinion, is a repeated perjurer.

THE COURT: I know, but how are you trying to bring that out with relation to other places?

MR. ROSEN: You see, in various cases he has been called in at the last minute to testify as a witness to things he never even saw.

Let me finish. The judge asked me a question.

He was a witness in the Thomas Bellows case, acquitted; he was a witness in the Marshall DeWitt case, acquitted; he was a witness in the Hubert Foster case, acquitted; and now he is a witness here.

I do not like him; he knows that. I have had him under cross-examination for an awfully long time.

THE COURT: I will allow you to ask him whether he has been called in these other cases and how long before he testified he was called as a witness.

I won't allow you to go into the acquittals because the acquittals could have occurred for any reason in the world, and I have no way of knowing.

MR. GREENWALD: I also at this time would put into evidence that Madison gave a statement in the investigation,

and I would want to put it into evidence. It is not like he came up the story two days ago.

THE COURT: That is up to you. One thing at a time.

Mr. Rosen, you can ask those questions, if you wish, but do not ask about the acquittals and do not represent that there were acquittals.

(In open court.)

BY MR. ROSEN:

Q Mr. Madison, you remember the prosecution of Hubert Foster?

A Yes.

Q You remember I was his attorney?

A Yes.

MR. GREENWALD: I want to make on the record my continuing objection to this line.

THE COURT: Your objection is noted.

Q Is it not a fact that you there came in as a rebuttal witness at the last minute?

MR. GREENWALD: I object to the characterization.

THE COURT: Let us not say "the last minute." If you want to, say "at the end of the trial."

MR. ROSEN: I will be glad to frame it that way.

Q Is it not a fact that youcame into the case as a

witness at the end of the trial?

A I was subpoenaed, yes.

Q And you there testified?

A Yes.

Q In the Marshall DeWitt case, were you not a witness in that case?

A I was a prime -- yes, I had to be a witness, sir. I was the one who arrested him.

Q And in the Thomas Bellows case, you were a witness?

A Which case was that?

Q That was in the drunken driving case.

MR. GREENWALD: Objection. I think Thomas Bellows --

A I don't recall being a witness in a drunken driving case of Thomas Bellows.

Q Would you deny that you were a witness?

A I don't deny it. I don't recall it.

Q In this case, when did you first disclose that you were a witness at all.

A July.

Q When?

A I made a statement on the 19th or 20th.

THE COURT: Are you talking about 1972?

THE WITNESS: 1972, yes.

Q You have worked in close harmony with the state police at the Ferndale Barracks?

A Yes, sir.

Q Over the years, at least 20 years, you have been in such proximity in friendship with that barracks; is that right?

A No, sir, only 11 years.

Q Make it 11 years.

So, for 11 years you and the state police at the Ferndale Barracks had been on a very cordial, cooperative basis?

MR. GREENWALD: I object to the characterization.

THE COURT: Overruled. He is just asking him that and the witness said yes. Nothing wrong with being cordial and cooperative with the troopers on the face of it.

Q In this case you had nothing to do with the Homer Salsbury case, right?

A Nothing. Except what I saw.

Q And you admit that Mr. Bellows was standing erect, walking around at the phone booth, was not lying down on the ground, was he?

A No.

Q And you knew his name?

A Right.

Q Homer Salsbury knew his name, didn't he?

A Yes, he did.

Q Did Homer say his name was Vincent Bellows?

A He didn't have to, not to me.

Q Well, did he?

A No, he didn't have to. I knew all along.

THE COURT: The only question is whether he did.

THE WITNESS: No, he didn't; no.

Q And you knew then, from the moment you saw Vincent Bellows, that he was Vincent Bellows, right?

A Oh, yes.

30 Q Did you go over to the state police and tell them, "This is Vincent Bellows, a long time resident"?

A No, I did not.

Q Did they ask you anything to say, "Should we arrest this man for not cooperating with us"?

A No.

Q Did you tell them you knew Vincent Bellows and that he was living in town?

A No, at that time I didn't even talk to the state police.

Q But you did, as you claim, park your car 90 feet away on a dark night and allegedly saw events occur in the

matter not concerning you; is that right?

A Yes.

MR. ROSEN: That is all.

THE COURT: Mr. Madison, am I correct in understanding that you did not see any offense committed at the telephone booth?

THE WITNESS: There was no personal contact at all.

THE COURT: Am I correct that you did not see any offense committed?

THE WITNESS: There was no offense.

THE COURT: Am I also correct that as far as you could judge you did not see any offense committed when you were watching the booth, I mean, the stoop of Mr. Bellows' house from 90 feet away?

THE WITNESS: Nothing.

THE COURT: All right. Thank you.

MR. ROSEN: That is all.

THE COURT: Mr. Greenwald, do you have any questions

MR. GREENWALD: Yes.

REDIRECT EXAMINATION

BY MR. GREENWALD:

Q I show you a piece of paper. Do you recognize this document?

A Yes, this is a statement I made.

Q Speak up.

A Yes, this is a statement I made on July 20, 1972.

Q Who did you make it to?

A I made it at the police barracks. I couldn't really remember who took it. It was at the state police barracks.

Q And it concerned?

A This matter here, yes.

Q Okay.

MR. GREENWALD: I at this time would introduce it into evidence.

THE COURT: It is not admissible in evidence except to corroborate the fact that the witness made a statement, and it is not denied that he made a statement.

MR. GREENWALD: Well, I think there has been an implication that he brought up this story quite recently. I think this is --

THE COURT: If it is solely for the purpose of indicating that the witness made a statement on that day, it would be admissible for that purpose.

MR. GREENWALD: Okay.

MR. ROSEN: May I see the statement, sir?

MR. GREENWALD: Yes.

THE COURT: I think the better way to handle that would be by stipulation, that a statement was made by the witness on that date and we do not have to worry about whether the jury looks at the statement itself.

Are you agreeable to making such stipulation, Mr. Rosen?

MR. ROSEN: Yes, I will make the stipulation.

MR. GREENWALD: I would, you know -- I know he is making the stipulation, but I would move it into evidence.

THE COURT: That also is overruled. It is not admissible for the truth of its contents, it is only admissible for the purpose of establishing that the witness made a statement which Mr. Rosen stipulates he did make.

MR. GREENWALD: Would you mark it just for identification?

THE COURT: Yes.

XXX (Defendants' Exhibit B marked for identification.)

MR. GREENWALD: No further questions.

THE COURT: Thank you, Mr. Madison.

(Witness excused.)

THE COURT: Do you have any other witnesses?

MR. GREENWALD: No. At this time the defendants rest.

THE COURT: Ladies and gentlemen, would you retire

dhcg

to the juryroom for a few minutes, please.

(Jury excused.)

THE COURT: Mr. Greenwald?

MR. GREENWALD: Yes.

At this time, at the close of trial, I have several motions to make.

I would, in the first place, request that any claim for punitive damages be dismissed. There has been absolutely no proof or showing of malice in this case or I think anything that would warrant any award of punitive damages.

THE COURT: Do you wish to comment on that, Mr. Rosen?

MR. ROSEN: Yes, sir.

The punitive damages may be denied but cannot be disavowed. The jury could find the verdict of $1 and still be punitive damages.

THE COURT: That is not the question. The question is whether there is enough evidence or any evidence of malice, wanton behavior, or oppressive behavior which would justify giving to the jury the question of punitive damages.

MR. ROSEN: I think the motion is premature. We have not done our rebuttal yet.

In the second place --

THE COURT: Do you have further witnesses?

MR. ROSEN: Yes. I want to get Mr. Bellows on.

THE COURT: Then the motion is premature. We will go ahead with further testimony.

Please call in the jury.

(Jury present.)

THE COURT: Mr. Rosen?

MR. ROSEN: Mr. Bellows.

V I N C E N T J. B E L L O W S, recalled.

THE COURT: You are under oath, Mr. Bellows.

DIRECT EXAMINATIO

BY MR. ROSEN:

Q Mr. Bellows, in the testimony given by the defendants, Danaick and Van Houten, they have said that they helped you into the car and that then you voluntarily entered the police car; is that correct?

A No.

Q What was the event and what did they do at the time and the place when they put you into the car?

A They forced me into the car. Two of them.

Q Were there two police officers?

A Yes.

Q They said they drove you around and that while you

were in the car you began to cry and said the police -- or they never give anyone a break, and that you would be cooperative. Did that happen?

A No.

Q Have you ever had experience with the police, the New York State Police, of the Ferndale Barracks heretofore?

MR. GREENWALD: Objection.

THE COURT: On what ground?

MR. GREENWALD: I think it is bringing in extraneous matters not involved.

THE COURT: I overrule that. The jury may hear this history for the purpose of determining, as I assume it is offered, whether or not it is credible that the witness would have testified, I mean, would have cried when he was in custody.

Is that why you are offering it?

MR. ROSEN: Yes.

MR. GREENWALD: I still object because --

THE COURT: What do you think the ruling is for?

MR. GREENWALD: I understand. I note my exception.

THE COURT: You do not need to.

Q How old are you now, Vincent?

A 29.

Q In January 1965 -- that is 11 years ago -- were you arrested on a complaint that you had committed a burglary in connection with one Eugene A. Porter?

A Yes.

MR. GREENWALD: Objection.

THE COURT: You can have a continuing objection to this line. Look, the jury is entitled to know the history of this situation.

MR. GREENWALD: It has nothing to do with these defendants, though.

THE COURT: Nobody says it has anything to do with the defendants. I said it is admitted solely for the purpose of the jury being able to determine whether they think it is plausible that the defendant would have cried when he was in custody.

MR. ROSEN: Whether or not he would have given the answer he gave.

THE COURT: The plaintiff, excuse me.

MR. GREENWALD: I also state I do not see what the great relevance, whether he cried or didn't cry, is to this case.

THE COURT: Mr. Greenwald, that is for the jury to decide, not for you.

Q Did you know Eugene A. Porter?

A Yes.

Q Was he a resident of Sullivan County for many years?

A Yes.

Q Was he also convicted in many cases?

A Yes.

Q What was he known as particularly?

THE COURT: No, wait a minute. Do not abuse the ruling.

MR. ROSEN: All right.

THE COURT: If you want to find out what the charge was and what the outcome of the case was --

31 Q Did Porter sign an affidavit for the police at the state police barracks at Ferndale stating that he committed a burglary and that you participated in it in January 1965?

A Yes.

MR. GREENWALD: Objection.

THE COURT: I would like to discuss this subject matter in the robing room because it is getting out of hand.

(In the robing room.)

THE COURT: Mr. Rosen, I want you to understand the limitations of my ruling. I believe that the question of whether the plaintiff was crying in the car or not may

be quite important in this case on the question of the credibility of the plaintiff and the respective defendants.

MR. ROSEN: That is right.

THE COURT: Therefore, I am willing to allow you to explore matters which might relate to the plausibility of his having cried in the car that night or not.

But I am not willing to allow a review of the legal history of Sullivan County and its various characters about whom I recommend that you write a book.

MR. ROSEN: I could.

THE COURT: What I am willing to do is to allow you to show what charges have been brought against Bellows, how they were disposed of, and so on, for the purpose of trying to indicate, as I assume that you wish to, that a man who had been through all that would hardly break down and cry when he was taken into custody.

MR. ROSEN: That is all I want to do.

THE COURT: Don't let's go into all the other affidavits and everything else.

MR. ROSEN: Could I show one thing: Porter, after we lost in the state courts, they indicted him for perjury, giving the state police the affidavits. That indictment killed our case. And then they dropped the indictment against Porter.

THE COURT: You can bring out how the case happened to be dropped if you want, or whatever it is.

MR. ROSEN: I will try to confine it to those issues.

THE COURT: A precise clinical history of the case.

MR. GREENWALD: If I can, I want to continue to note my exception. It seems that this is totally outside the scope of this case, vis-a-vis these defendants.

THE COURT: Absolutely not. Your clients have made it very much within the scope of this case.

(In open court.)

THE COURT: Before the testimony is resumed, I understand Mrs. Froschl has a question. Is that correct?

JUROR NUMBER 5: There's some confusion --

THE COURT: I am not surprised.

JUROR NUMBER 5: -- over the testimony. Some of us thought we remembered yesterday the fact that someone had testified that Johansen, Eddie Johansen, had been arrested by the local police and taken away. That is why the troopers, when they came, saw only one of the people left, was because somebody had arrested Eddie Johansen.

Mr. Madison testified -- we assume he is the same local police that came -- and he said he didn't take anybody away. So we would like to --

THE COURT: All I can say, Ma'am, is that that question is unreconciled in my mind, too.

JUROR NUMBER 5: I'm sorry.

MR. ROSEN: In my mind, too.

THE COURT: That is not unusual in cases and I do not know what it proves one way or the other.

MR. ROSEN: I had the same question.

THE COURT: All right.

Q Mr. Bellows, were you arrested upon a complaint that you had participated in a burglary with Eugene A. Porter in January 1965?

A Yes.

Q And that burglary occurred about January 16, 1965?

A Correct.

Q And on --

MR. GREENWALD: Objection as leading.

THE COURT: I do not want to take too much time here. Just to get the facts before the jury. What happened in the case?

MR. ROSEN: I want to get the date.

Q On January 10, 1965, had you left Sullivan County?

A Yes.

Q Was there any further prosecution of that case?

A No.

Q Was the charge dropped?

A Yes.

Q Did Porter sign a recanting affidavit and said it was false that he charged you?

A Yes.

Q Was he indicted for perjury?

A Yes.

Q Was the indictment against Porter then dropped and the police did not prosecute?

A Yes.

Q Let us take the next case.

In or about the middle of May 1968 --

THE COURT: Before you proceed, I would like to give the jury an instruction.

I want to make it clear why I am allowing the witness to testify about this material. As far as I understand, the cases that he has testified, just finished testifying about and will testify about, are not cases with which the defendants were connected. It is not charged that they are part of a pattern of which the defendants are members.

The purpose of allowing you to hear this is limited only to your determining, in your own minds, whether it is plausible whether the plaintiff would have broken down and cried as the defendants testified that he did.

All right, Mr. Rosen.

Q In the month of May 1968, when you were then about 19 or 20 years old, did you decide to open a shop with games for the use of the local residents in Livingston Manor?

A Yes.

Q Amongst those games were five pinball machines?

A Yes.

Q On the opening day of your business, May 30, 1968, did police investigator or BCI Investigator Reichmann come to your place, arrest you, and take those five machines and charge you with gambling?

A Yes.

Q Were those machines identical in every respect?

A Yes.

Q There was a complaint made against you before a judge on one of the machines that it was a gambling machine

A Yes.

Q Was there a trial before Judge Horak?

A Yes.

Q Did I represent you in that trial?

A Yes, you did.

Q Were you acquitted?

A Yes, I was.

Q Now, before they returned the machine did they make

a second charge on the second machine which was identical to the first?

A Yes, they did.

Q Was a charge of gambling then brought against you and you were arraigned before Judge Horak the second time?

A Yes.

Q Judge Horak then resigned, did he not?

A Yes, he did.

Q And a new judge was appointed, Judge Spriggs?

A Yes.

Q Was the second trial held before Judge Spriggs?

A Yes, it was.

Q What happened?

A It was thrown out.

Q You were acquitted?

A Yes.

Q Were there also charges made against you that you once threw a firecracker at a girl?

A Yes.

Q What happened to that case?

A I was acquitted.

Q Was there once a charge made by the same state police barracks, or someone attached to it, that you were in a fight at the Arlington Bar?

A Yes.

Q What happened to that case?

A Nothing.

Q Was it dropped?

A Yes.

Q Even after this case was brought, here in the Federal Court --

THE COURT: Nothing after this case was brought.

MR. ROSEN: There is still another one.

THE COURT: But we are limiting this to material to the plausibility of whether he cried,and what happened after this case will be irrelevant.

MR. GREENWALD: I want to note there has been no mention of crying.

THE COURT: Mr. Greenwald, would you please keep quiet? You have made an objection on this point five times and I have overruled you.

Q During the course of the years since 1965 and in the various cases that you have been charged by the same police from the same police barracks, you have learned from instructions from your counsel what you were to do the moment the police arrested you or took you into custody?

A Yes, sir.

Q On the night in question, did you, the first thing

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when the police came, shout to your friends, when they took you, to get you a lawyer?

A Yes.

Q And that was me?

A Yes.

Q Now, they dropped the case against you, didn't they?

THE COURT: Which case are we talking about?

MR. ROSEN: The one here, the so-called drunkenness

Q Were you drunk?

A No.

Q Did you tell them, pursuant to your knowledge of the law, that you would not give them more than your name?

MR. GREENWALD: Objection.

A That's correct.

THE COURT: Objection to what?

MR. GREENWALD: His knowledge of the law. This is not an expert, and I do not think --

THE COURT: But now --

MR. ROSEN: He knows more law than any lawyer about this subject.

THE COURT: I will overrule the objection.

Q Would you answer that question? You told the police you wanted a lawyer?

A Immediately.

Q And you would not cooperate with them?

A No.

Q Had you received that instruction from counsel, that whenever this occurred --

THE COURT: I believe you brought this out on direct examination.

Q When they had you in the car, did you cooperate?

A No.

Q Did you tell them, "You fellows never give anybody a break"?

A Not hardly, no.

Q And did you cry?

A No.

Q And how long after they let you out did you speak with Mr. Rosen?

A Ten minutes.

Q Did you call Mr. Rosen at his house?

A Yes.

Q Had he so instructed you in case of emergency?

A Yes.

Q Did you make an immediate complaint to the state police against this act?

A Yes.

Q Was an investigation then taken?

A Yes.

Q That is the papers we have been referring to throughout this trial?

A Yes.

Q Officer Dainack said that he went over and helped you up from the stoop. Did he help you up?

A He sure did.

Q How?

A He forced me up.

Q How did he do it?

A He grabbed me by the arm and then the other officer assisted him to put -- force me into the back seat of their automobile.

Q Did you voluntarily and of your own free well get into that car?

A No.

THE COURT: Mr. Rosen, you asked that at the very beginning of this particular examination.

Q There were other cases, were there not, with the state police?

A Yes.

Q Of the Ferndale Barracks?

A Many.

THE COURT: Before July 1972?

THE WITNESS: Yes, many.

Q Give us a few.

A Well, there was the firecrackers was dismissed. There was the thing with Porter which was dismissed.

THE COURT: We have gone through all that.

A Disorderly conducts which were dismissed.

Q When was that?

A Oh, prior to 1972.

THE COURT: I think you have explored the subject sufficiently.

Q In other words, Mr. Bellows, you and the state police at Ferndale Barracks were not cordial?

A No.

MR. GREENWALD: Objection to the characterization.

THE COURT: Overruled.

MR. ROSEN: That is all.

THE COURT: Do you have any questions, Mr. Greenwald?

CROSS-EXAMINATION

BY MR. GREENWALD:

Q Mr. Bellows, as a result of the Porter case did you bring an action against the state police?

A Yes, I did.

Q In what court?

A The Court of Claims.

Q What were you basically charging the state police with?

A False arrest.

Q That they had taken you into custody improperly?

A Yes.

Q What was the result of that?

A It was denied.

Q Was an appeal taken?

A Yes.

Q What was the result of that?

A That was denied.

Q On this gambling matter, did you bring an action against the New York State Police?

A Yes, I did.

Q In what court?

A The Court of Claims.

Q What was the claim?

A False arrest.

Q They improperly arrested you?

A Yes.

Q What was the result of that?

A It was denied.

Q Denied?

A Yes.

Q Did you appeal that?

A Yes.

Q What was the result?

A Denied.

Q So that you brought in the past two actions against the New York State Police basically charging them with improper arrest of you, and the result has been the dismissal of those claims?

A Yes.

MR. ROSEN: I respectfully correct the record. They were brought against the State of New York, sir. In both cases.

MR. GREENWALD: They involved the state police.

MR. ROSEN: Yes.

MR. GREENWALD: No further questions.

MR. ROSEN: You have opened the door.

REDIRECT EXAMINATION

BY MR. ROSEN:

Q In the Porter case, Porter, who had given the affidavit, was indicted for perjury, wasn't he?

A Yes, he was.

MR. GREENWALD: Objection.

THE COURT: That is already in the record.

Q As a result of that indictment, your claim against the State of New York for misconduct by the state police was dismissed?

MR. GREENWALD: Objection?

A Yes.

THE COURT: Overruled.

Q Then, after you lost the case because the indictment against Porter had been filed, they dropped the indictment?

A Yes.

Q So that Porter got free and you --

MR. GREENWALD: Objection.

THE COURT: Let us not worry about Porter, whoever he is.

Q Let us take up the gambling case. Judge Heller wrote the decision --

THE COURT: Mr. Rosen, just ask questions, please. Do not make a statement.

MR. ROSEN: Okay, sir.

Q Did Judge Heller rule that the state police --

THE COURT: Do you know what Judge Heller's ruling was?

THE WITNESS: Yes.

THE COURT: What was it?

THE WITNESS: What was it on the machines?

THE COURT: I do not know.

Q Did Judge Heller sign against you in the Court of Claims because he said the state police were justified in making --

THE COURT: I am trying not to lead the witness. If he knows what it is, if there is something of record, I will take judicial notice of it.

MR. ROSEN: I will give you his decision.

THE COURT: All right. But there is no point in asking.

If you know, do you know what he held?

THE WITNESS: Not exactly, no.

THE COURT: Bring it to my attention and I will take judicial notice of it and advise the jury.

Are there any other questions that you have of Mr. Bell s? He is a fact witness.

Go ahead. Otherwise, as to matters such as you are now dealing with I will take judicial notice.

Q As a result of your experience, is that why you refused to cooperate with the police at this time?

A Yes.

Q You just gave them your name?

A That's all.

MR. ROSEN: That is all.

THE COURT: Thank you, Mr. Bellows. Step down.

MR. GREENWALD: At this time I think I would like to call back --

THE COURT: Wait a minute. Mr. Bellows excused.

(Witness excused.)

MR. GREENWALD: I would like to call back Mr. Madison. There is some confusion as to the role he played --

THE COURT: There is nothing in Mr. Bellows' testimony about Mr. Madison.

MR. GREENWALD; No, but I feel that you had indicated some concern about whether Mr. Madison was the arresting officer or who was the arresting officer. I believe he does have knowledge on that, and I would recall him back.

THE COURT: In regard to the question asked by a member of the jury?

MR. GREENWALD: Yes.

THE COURT: All right. Mr. Madison.

H A R O L D E. M A D I S O N, recalled.

DIRECT EXAMINATION

BY MR. GREENWALD:

Q You are still under oath, Mr. Madison.

Do you have any knowledge about who might have been, of the local town police, who --

A Yes, there were two other constables, Eric Nissen and William Gardner, arrested Edward Johansen for public intoxication.

Q And you were not involved in it?

A I wasn't involved, no.

THE COURT: I take it you have no questions about that, Mr. Rosen?

MR. ROSEN: No, I have no questions.

THE COURT: Thank you, Mr. Madison.

(Witness excused.)

33 THE COURT: You have no further witnesses, do you, Mr. Rosen?

MR. ROSEN: No, sir.

THE COURT: Do you have any further witnesses?

MR. GREENWALD: No, your Honor.

THE COURT: Ladies and gentlemen, you are excused --

MR. ROSEN: Plaintiff rests.

THE COURT: -- now until 2 o'clock, a little earlier than usual, because we have come to the end of the testimony and I have to prepare my charge, and the gentlemen will be getting ready to prepare their summations for you.

Will you please be back here at two o'clock promptly

and we will proceed at that time?

(Jury excused.)

THE COURT: Do you wish to make your motions now, Mr. Greenwald?

MR. GREENWALD: Yes. I think at this time I will --

THE COURT: You have already moved, and I will regard it as having been made again, to not let the question of punitive damages go to the jury.

MR. ROSEN: I was about to answer.

THE COURT: And Mr. Rosen --

MR. GREENWALD: I think I had withdrawn it at the time, although I will renew it. I want to put them frankly in a different order.

At this time I renew my motion to dismiss the complaint for failure to show a prima facie case.

THE COURT: Well, at this stage of the game it would be --

MR. GREENWALD: On the entire case.

THE COURT: That motion is denied.

MR. GREENWALD: At this time I think I can move for a directed verdict.

THE COURT: If I am not going to dismiss the case, I am certainly not going to direct a verdict.

MR. GREENWALD: As a final motion, I would request

that any issue of punitive damages or the issue of punitive damages not be sent to the jury. I think there has been no showing of malice or aggrievement or ill will as to these defendants, and --

THE COURT: I do not think malice is the only element with regard to punitive damages. At least the standard charge relates to malice, wanton behavior or oppressive behavior.

MR. GREENWALD: I think as to wanton behavior and oppressive behavior I would submit there has been no showing of that; and, furthermore, no -- or showing of malice, and in the circumstances, on the basis of all the testimony, that any issue of punitive damages should not be sent to the jury.

THE COURT: Mr. Rosen, I will hear you on that matter alone and restrict you to the question of what evidence there is in the record that would support that.

MR. ROSEN: In this particular case we talk of wantonness. You must bear in mind throughout the case that the very things the defendants depended upon to show their good faith proved their bad faith.

They arrested a man off the street who was doing nothing, take him away, and almost instantly return him. Instead of it being a justification for their conduct that they released him quickly, it was evident they should not

have arrested him in the first place.

There is no room to take citizens off the street and say I am going to arrest him, and say two minutes later we will let you go. There is a degradation attached to this. It just happened with them they picked a fellow whom I say they knew, and they knew it very well, and they knew who he was. It is all part of the continuing pattern which I am trying to stop by these cases.

THE COURT: Mr. Rosen, you understand I am not going to let you talk to the jury about a pattern of behavior by the state troopers, because there is no testimony in the record, no evidence to show that the defendants did know Bellows before.

The only reason I allowed you to bring up the other cases was to show it was implausible that he wouldhave cried.

MR. ROSEN: Yes.

The second part, they could find as a question of fact $1 compensatory damages for the 15 minutes or ten minutes or five minutes they had him and say they should not have done this, and that is punitive.

THE COURT: This I understand. I will state for the record that I do not think there is any evidence of malicious behavior.

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MR. ROSEN: What is more malicious than an immediate arrest and release?

THE COURT: Malicious means, in my mind, having an affirmative ill will towards the plaintiff.

I will consider it further, but at the moment my inclination is to feel there is no malice in the record. But there may be evidence perhaps of wanton behavior or oppressive behavior. I want to review the definitions of those terms and I will let you know before your summations whether I will allow that question to go to the jury.

MR. ROSEN: May I respectfully point out, sir, you know, when we talk of malice on the part of a police officer, or a denial, when you are on this side of the bench, do not think when I ask the question I expect the policeman to blurt out "I'm guilty."

THE COURT: And do not think when I am on this side of the bench I do not see it, either.

MR. ROSEN: Sometimes the courts do not seem to think so. I have been resentful of the statement by Judge Heller that it was perfectly all right for a police officer to arrest Mr. Bellows on a repealed statute. It is in the appeal. The statute was repealed.

We went under the new statute, and he said that is all right, they can arrest him under the old one.

THE COURT: I do not think I could be held responsible for what Justice Heller said, and I do not think the defendants can be held responsible for what other people did unless either I am shown to be connected with Justice Heller, or they are connected with the evidence.

MR. ROSEN: No, but it shows my attitude.

THE COURT: I understand that, but that is not the question before me.

MR. ROSEN: The question here on punitive damages, sir, I say it was wanton, it was careless, careless to the point of recklessness.

THE COURT: The question is --

MR. ROSEN: And they were offended by his statement to them. I will tell you --

THE COURT: I have not made up my mind. I will let you know immediately before your summations.

MR. GREENWALD: I would just point out I have a requested charge. Apparently my adversary recognizes this really seems to be a matter of very well nominal damages.

MR. ROSEN: I am not agreeing to anything.

THE COURT: Yes, I notice you had a request in your charge, if nominal damages were given, they could not give punitive damages. You have no reference to the authority for that statement.

MR. GREENWALD: I have the charge in Winters v. Miller, Judge.

MR. ROSEN: That is not in this case.

THE COURT: Hold it. What?

MR. GREENWALD: The charge in Winters v. Miller, 769 Civ. 783.

THE COURT: In this court?

MR. GREENWALD: In the Eastern District, Judge Judd.

MR. ROSEN: What was the name of that?

THE COURT: I am not prepared to charge to that effect without knowing the facts of that case.

Maybe in that case a ruling of nominal damages was available, barred; punitive damages might have been appropriate. I cannot see why as a matter of law that would necessarily be so. Unless it is necessarily so, I would not charge it. We could well imagine that a jury might find that defendants or, rather, plaintiff did not suffer any important actual damage, but the behavior of the defendants was such that it should be reprimanded by punitive damages.

34 MR. GREENWALD: I think also I would like to point out there are some --

THE COURT: In any event, if you are right on the law, and if punitive damages should be brought in and this is

a nominal award, I can always set aside the punitive damages.

MR. ROSEN: I can also bring you a case.

THE COURT: You should have done it by now.

MR. GREENWALD: I also point out there seems to be some desire vis-a-vis this plaintiff --my adversary has been arguing that it has been apparent to your Honor that he has been subjected to this maltreatment by the state police, not these defendants.

THE COURT: Right.

MR. GREENWALD: But I would point out, by the way, that he no longer -- the plaintiff no longer resides in the area. Apparently he has voluntarily gone down to Daytona Beach, so that the punitive nature of award --

THE COURT: You mistake the purpose of a punitive damage. It is not only to protect the plaintiff in question, but to protect the public.

MR. ROSEN: We have been ex-communicated by the police. He has been driven out.

THE COURT: I am going into all these questions. I will meet with you briefly at 2 o'clock to give you my ruling on that point and my requests to charge, and you can sum up.

MR. ROSEN: Do you want this from Judge Hollister?

THE COURT: Will you circle the material you want

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me to take judicial notice of?

MR. ROSEN: It is a brief opinion, about four pages.

THE COURT: I certainly do not want to have to take judicial notice of all that. Can't it be condensed into a brief statement of the nature of his holding?

MR. ROSEN: Here it is.

THE COURT: All right. If you will give me that.

You can let Mr. Greenwald read it so he knows what is being offered to me.

MR. ROSEN: It is part of the record from the Appellate Division.

(Luncheon recess.)

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AFTERNOON SESSION

(2.00 p.m.)

(In the robing room.)

THE COURT: Since we have the jury waiting, I would like to use this time, first of all, to rule on the pending motion by Mr. Greenwald.

Mr. Greenwald, I am persuaded that it would not be proper for me to dismiss the claim for punitive damages since I believe that a reasonable juror could find that punitive damages are allowable in this case, which is not to express my own personal view of the matter.

MR. GREENWALD: Note my exception.

THE COURT: Mr. Greenwald, in the Federal Court it is not necessary to note your exception.

MR. GREENWALD: Okay.

THE COURT: Mr. Rosen has pending a request that I read to the jury from the decision of the Appellate Division in Bellows against State of New York --

MR. ROSEN: That is from the Court of Claims' decision.

THE COURT: -- from the Court of Claims' decision, appearing in the record to the Appellate Division of Bellows against State of New York, and I am perfectly willing to take judicial notice of whatever I consider to

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be relevant to the case, Mr. Rosen, but I do not understand why the excerpt that you have marked here is relevant to the issues that we were bringing up.

(Off the record.)

(Discussion off the record.)

THE COURT: I have read to Mr. Rosen the excerpt which he has asked me to read to the jury and have stated that I find that it is too esoteric and professional in nature to be useful to the jury in understanding the issues of the case, and that I believe that he has presented adequately to them the evidence on which he will claim that the plaintiff, who had enough gumption to sue the State on various occasions, would not be likely to have broken down in tears in the car operated by the defendants.

MR. GREENWALD: At this time I am referring to Mr. Rosen's cross-examination of defendant Dainack. Mr. Rosen had made a statement of law about an arrest for a misdemeanor.

If you recall, Mr. Rosen.

MR. ROSEN: Yes, I certainly do.

THE COURT: You said if he makes an arrest for a misdemeanor --

MR. ROSEN: Not in his presence.

MR. GREENWALD: Not in his presence. What is

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the situation?

MR. ROSEN: That he has no right to make the arrest.

MR. GREENWALD: I would respectfully request the Court's attention to Criminal Procedure Law 140.10.

THE COURT: I do intend to charge 140.10.

MR. GREENWALD: That he can make a misdemeanor --

THE COURT: He can arrest on the offense, and I will make it clear that it was proper for the defendants to make an arrest in this case if they had reasonable cause to believe that he was publicly intoxicated in thier presence.

I will also advise the jury of the contents of Section 140.20, which provides that if, after arresting a person for any offense, a police officer on further investigation is satisfied that there is no reasonable cause to believe that the arrested person committed the offense, he need not follow any of the procedures prescribed, but must immediately release such person from custody.

MR. ROSEN: Will you add to it, it is not a defense to his having been let go without proper authority.

THE COURT: I won't make that statement.

MR. ROSEN: That is for them to decide.

THE COURT: I will make it clear whether they

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had a right to arrest him in the first instance, but you intended or, rather, attempted to convey to the jury a proposition of law which is not correct, namely, that if a person is arrested, a police officer does not have the authority to let him go without bringing the matter to the attention of a magistrate. That is not so.

MR. ROSEN: I will take your Honor's view. But let us go one step further.

This statute is not a defense to him when he let him go.

THE COURT: I did not say that.

MR. ROSEN: In other words, I think it hurts them more when they let him go than if they hold him.

MR. GREENWALD: There is another point, and I do not really know exactly how to express it, but I would think that it should be charged that a police officer has not violated someone else's constitutional rights by speaking to a person on the street.

THE COURT: I do not think there is any claim on that.

The major logistic matter is to rule on Mr. Greenwald's requests to charge, of which I note for the record that there are 57, which I note because it is impossible for me to rule on them individually.

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MR. GREENWALD: Yes.

THE COURT: Therefore, I will only say, Mr. Greenwald, that as to the first 33, which I find to be what I would describe as boiler plate requests, they are granted in substance. And if disagree with them as you hear my actual charge, you will have an opportunity.

MR. GREENWALD: By the way, I would point out, of course, I think on No. 9, page 6, I had something here which was added in writing. It has no relevance after the first sentence.

THE COURT: Frankly, I have not prepared my charge on the basis of your requests.

MR. GREENWALD: I understand.

THE COURT: So that you need not worry about particular language.

MR. GREENWALD: I mean, it was language that should be crossed out right away. It is not relevant.

THE COURT: 34 is granted in substance.

35 does not seem to be here.

36 is granted in substance.

37 I will give my own statement of the plaintiff's claim.

I do not see where 38 is.

39 --

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MR. GREENWALD: 38 is below on that handwriting. It follows about the middle of the page.

THE COURT: I will give my own statement of the defendants' contentions, also.

39 is taken from Matthes and Devitt, and to the extent it follows Matthes and Devitt, it is granted in substance.

MR. GREENWALD: That is 39-A, basically.

THE COURT: Yes.

39-B is granted in substance.

Then you seem to jump to 47.

MR. GREENWALD: Yes.

THE COURT: Granted in substance, as is 48.

MR. ROSEN: It is so standard, I would expect you to charge them as a matter of course. That is why I did not raise them.

MR. GREENWALD: Then I jump back to 44.

THE COURT: 44 is granted in substance.

MR. ROSEN: I did not notice any charge request for a five-six verdict.

THE COURT: All I can say with regard to 50, I suppose 50 is granted in substance. I will charge good faith as a defense.

MR. GREENWALD: Yes.

hs7

THE COURT: The same comment applies to 51.

52 is granted in substance.

MR. GREENWALD: Excuse me.

THE COURT: 53 I am not mentioning. I am not talking about nominal sums. I do not see any particular reason for me to do that. If they find he is entitled to nothing, fine, or a dollar, fine.

54 let me say I deny. I do not believe that it is a correct statement of the law that where a nominal sum is granted punitive damages may not be graned; but should I be incorrect and should the jury do both, you will be able to move to set aside the verdict for punitive damages.

MR. GREENWALD: As I say, I did not have a chance to research it, but I did get it from this other charge.

THE COURT: With regard to the next ne, 55, which you say is modeled on Johnson v. Glick, I decline to charge that because the defense to the use of force here is not the force was appropriate, but that it did not --

MR. GREENWALD: I would point out that there is an allegation as to the arrest that they may have used some force, and that is why --

THE COURT: No, there is not. There is an

hs8

allegation that they used force, but there is a denial that the force was used. So the issue on the force question is whether or not force was used.

There is no evidence in the record it was necessary to use force. Your defendants did not say yes, Judge, we twisted his arm because they had to. They said no, Judge, we did not twist his arm.

MR. GREENWALD: Of course.

THE COURT: So that is the issue.

56 is granted in substance.

57 is your new one. Yes, I do charge in substance to that effect.

58 I charge in substance to that effect. I do not take as long to make these charges.

60 is the same as one of the earlier requests, that is, as to CPL 140.20.

59 I am actually using in modified form. All right.

Now, the only other thing that I want to clear before we go in and sum up is this:

I have prepared special questions for the jury, which I think is the only orderly way to get a verdict in a case like this.

I hand you at this time copies of those ques-

hs9

tions and ask you to look at them and make your comments on them.

MR. ROSEN: Thank you.

The only question I find --

THE COURT: As to which one?

MR. ROSEN: No. 1, you have used the term "preponderance of the evidence". I believe the term is "preponderance of the credible evidence". I do not want to be semantic about it.

THE COURT: All right. I will put "credible" in.

MR. GREENWALD: I do object to the form.

THE COURT: Of which one?

MR. GREENWALD: It would seem to me --

THE COURT: Which one?

MR. GREENWALD: Which one? The fact that you put together good faith and improperly taken into custody.

In No. 1, I think that the question should be approached in the manner of the plaintiff's claim, and then I believe as a separate claim, you know, whether they sustain the defense of good faith.

THE COURT: I this case, I mean, in some cases, it seems to me that an officer may make a mistake of law and still be in good faith.

hs10

In this case, it seems to me that if they were in good faith they acted within the law. And if they were not in good faith, they did not act within the law.

And in this case acting in good faith would be the linguistic or least conceptual equivalent of having reasonable cause to believe.

MR. ROSEN: No. 4, your Honor, you have "actual damage". Now, I do not think that that is the standard in a matter of compensatory damages in a case like this. It is that amount of damages the jury feels may make him whole for the disturbance, the inconvenience, the traumatic experience.

THE COURT: I will allow you to state that to the jury, and I do not disagree: but I think that is actual damage.

MR. ROSEN: We had no real actual damage other than $5 to the doctor. The money damage is that.

MR. GREENWALD: I do not even think --

THE COURT: I will put in how much actual physical or emotional --

MR. ROSEN: The whole thing here is emotional. How do you weigh one punch?

THE COURT: What I mean is, it cannot be imagined.

hsll

MR. ROSEN: But a jury can appraise it.

THE COURT: I know that. I am not striking the word "emotional", I am adding the words "physical or emotional".

MR. ROSEN: That is all right.

MR. GREENWALD: I would state also that I point out that there is no evidence in this case. He just said he paid a doctor's bill. We do not have the doctor's bill even in this case.

MR. ROSEN: It was so small we did not ask for it.

THE COURT: They cannot find it.

MR. ROSEN: It was $5 or $10.

THE COURT: Does that conclude your remarks, Mr. Rosen?

MR. GREENWALD: Your Honor, I do --

THE COURT: Just a minute. One at a time.

MR. ROSEN: I have nothing further.

MR. GREENWALD: I wish to point out, as to the physical force of getting into the car --

THE COURT: Which one are you referring to? Refer to the number.

MR. GREENWALD: I am referring to No. 2 and No. 4-B, and not No. 3. 4-B.

hs12

THE COURT: Yes?

MR. GREENWALD: I think in that context the physical force in effectuating the arrest, even though my people do clearly deny it, I think that I have to consider the situation where the jury might find there was phsyical force, and then I think as far as effectuating the arrest, good faith is a defense, or I think I request you to charge that in effectuating an arrest, an officer has the right to use reasonable force.

I think that is standard. There is some evidence here in this case about, you know, a claim that he said he would not get in. My people said he voluntarily got in. Of course, that is a question of credibility. But I do not think the issue --

THE COURT: I do not see why I should go beyond the claims which the defendants themselves make.

I will be glad to say that if the jury finds they merely assisted him into the car, that does not constitute physical force for which any claim can be made. If they believe your defendants' story, that is all right.

But I am not going to go beyond that and say if they do not believe your defendants' story, something else applies.

hs13

MR. GREENWALD: Basically, the good faith defense is if they believe the plaintiff's story, we still have the defense.

THE COURT: That is not what your defendants claim on the question of going to the car. They do not say yes we used force, but it was in good faith. They say we did not use force. That is the question they put to the jury.

MR. GREENWALD: I think I put it as an alternative.

THE COURT: Yes, I understand, and I disagree.

(In open court; jury present.)

THE COURT: Mr. Greenwald?

May I make one comment before counsel sum up.

You will recall, ladies and gentlemen, when I spoke to you yesterday I told you that the case, in any case, has to be decided solely on the basis of the evidence, that is, the testimony and any exhibits.

Counsel now are going to sum up for you, and I remind you that, as I told you yesterday, whatever they say in their summations does not constitute evidence. You have now heard all of the testimony and have been made acquainted with all of the exhibits, that is, the evidence. And if there is any conflict between what counsel say and your recollection of the testimony or evidence, it is your recollection that controls.

MR. GREENWALD: Ladies and gentlemen of the jury:

We now are pretty -- coming pretty close to the time when you will be deciding the factual issues in this case under the instructions of the judge.

I welcome this opportunity to give you some views on this case, to review the evidence and recognize, of course, the fact that you have heard the evidence; but I feel that I can be of assistance in reviewing it with you.

Now, as you are aware, this is what is called a

civil rights action, and the plaintiff is a Vincent J. Bellows. Now, I think you should recognize that -- it is rather obvious -- the plaintiff came here to tell you half a story. It was only on cross-examination that he even told you about being at the phone booth, the first encounter with the state police.

And I would submit that this bears on his credibility. I think that a witness, even a party, should, in the first instance, tell you the whole story. And I point out that as to the arrest or taking into custody, it is basically a conflict.

I attempted to, on cross examination, have it demonstrated how this alleged blow took place in the car, and I say "alleged" because, as many things, it is vehemently denied by the defendants it ever took place. There is no corroboration

His attorney had to correct his testimony as to which hand was holding him, allegedly holding him, which hand was administering the blow. I think you just apply your common sense to the likelihood of this even occurring. This was in a moving car, Mr. Bellows was totally unrestrained in the back seat.

There is even the -- he stated that the state trooper turned around and, over the back seat of a car, while it was

moving, administered this blow. I submit that this is a highly improbable event; and, furthermore, I think you should recognize that there is no evidence of any -- any physical evidence of it having occurred.

I cannot or I won't at this time review all of Mr. Bellows' testimony. I think you recognize we had to basically totally fill it in on the cross-examination. He had made the statement previously to the state police, which at which time rather obviously his recollection was much better.

I think all of this bears heavily on his credibility. I think that there is concern at great length about whether he cried or not cried. I don't see it as, you know, a matter of any particular moment. Apparently my adversary thinks it is extremely important.

The point of the matter is that in this regard the defendants, the state troopers, described what happened in the car and how they came -- you know, how they came to just simply let him go.

Now, the second witness that the plaintiff presented was, I think, David Miller. Now, we all know -- it is not disputed -- he is a friend of Mr. Bellows, and I also point out to you he came here to tell half a story. And, once again, it was not until cross-examination that he gave you approximately what might be a complete story.

And I might point out, this is from plaintiff's own witness he established the fact that plaintiff Bellows had been involved with this Homer Salsbury, with the matter at the phone booth. It might be called a ruckus, assault, imprisonment, because they didn't let the door open, or whatever. And I say, of course, all of this bears on the credibility of David Miller as to his statements as to the taking away or the arrest of Bellows.

Now, I also point out, of course, that Miller did not tell you very much or really did not tell the whole story about the fact he was involved with Homer Salsbury, too. He was a part of that corner crowd.

In fact, the position of the plaintiff and his witness seemed to be, when they finally -- when the plaintiff finally admitted he was there, was, I was just sitting there.

But I think the testimony is clear that the state police did have, or Trooper Dainack did have, some contact, short as it might be, with Bellows, and obviously not physical at that phone booth, and that the plaintiff here was pointed out to be one of the people involved.

35 Now, the defendants, the two defendants, the two state troopers, I submit, from the start came here and told you the full story, from beginning to end. They told you, they testified, as to how they happened to be in Livingston

Manor, as to their duties that night, what they saw and heard at the phone booth, how they happened to come to this stoop, which was a public street.

They testified as to the action for themselves and what they saw happening there, namely, the arrest, and I wish to emphasize the reasonable belief or reasonable cause that Vincent Bellows was intoxicated, and that there was reasonable cause to believe that he was, you know, guilty of violation or an offense of public intoxication, as the judge will charge you on; but I wish to emphasize to you it involves a bit more than just being intoxicated. It involves being a danger to yourself or others. But there, of course, there was reasonable cause to believe that, because of the events of this day and what had been going on and the connection of Bellows to them.

You have also heard, and I think the actions of the police, as you have heard them from the defendants were totally reasonable. They did not know Bellows, they have so testified. Bellows did not know them. I point out it is the defendants that are the defendants in this case, it is not the state police.

I think the fact that they -- from the start -- were here to give you a complete story, I think bears on their credibility. I think the fact that absolutely no -- there

was no malice shown shows credibility and good faith, and contrary to what you may -- what may be inferred by my adversary, I would submit that the fact that the defendants voluntarily released Mr. Bellows after, at most, five, ten minutes, strongly indicates that they were in good faith. They were not out to do him in.

There is no -- there should be no issue that if the had kept him in custody and taken him to the stationhouse, and then, you know, get booked and fingerprinted, and then you're taken probably not until the next morning to the J. P., because this was the middle of the night, that you would be hearing a claim he was in custody for seven, eight hours. Oh, how terrible.

We are dealing here with five, ten minutes. Perhaps no longer than, as I say, if a policeman walked up to you on the street and asked you a few questions. And I think, you know, as a responsible citizen, any of you would answer his questions and let it go at that. And that is about -- even though there was this arrest of public intoxication -- that is about all this amounted to.

Now, I wish to emphasize, of course, that we -- only Trooper Dainack is accused of administering this blow in the car. He completely denies it. Trooper Van Houten, obviously he was driving. He couldn't have done it. There

is no claim that he did do it.

But he did not hear anything, and I think that the fact that if there had been a blow, he would have taken -- I think it would be logical that there might -- there would be a cry, that he would have stopped the car, and that Bellows would have -- there would have been some testimony of certain action in the car. But apparently the car just drove on. There's no claim that it ever really stopped.

I think you also should consider the total unlikelihood that out of the blue Trooper Dainack would turn around. He's been apparently -- in talking to him -- the testimony is he broke down, he told all about him. And Trooper Dainack, I think at that point, was satisfied to the identity and was coming to the opinion that he was not a danger to others. That he would throw a punch at that point, there was no purpose. There is no -- there would be no reason.

Now, I will go on to, of course, we had the testimony from his partner, fellow trooper, Brian Van Houten. He was, as we say, the driver of the car and assisted in makin the arrests. As I pointed out, once again, he obviously did not assault Bellows. There is no claim. He was driving the car.

But, as I have emphasized, there was no action in the car other than being driven. There is no claim by Mr.

Bellows that anything else happened.

Now, we presented a third witness, not a party, Harold Madison. Now, Mr. Madison is a town policeman. He was around town. It's not unusual that he be around this area, because Livingston Manor is not a big town.

There was what we all know, a firemen's carnival going on. There was a lot of drinking going on. And I think it is reasonable to state some policemen are more tolerant to certain conduct than other policemen. But he was an independent source, once again. He independently placed Bellows at that phone booth. He even placed David Miller there. So David Miller was not telling you the complete story, I mean, at the phone booth and with the ruckus, the banging on the door and that.

Now, he also -- I think he certainly testified -- he just happened to be there. He did not have any contact, of course, with the state police, but he testified, of course, he saw no force being used in the arrest of Bellows.

Now, I would like to go back to this question of the intoxication. I do not think there is any dispute here, or I think the testimony clearly shows from the direct and cross-examination of the plaintiff he basically had been drinking a lot of beer all day. Now, I think you can draw from your own experience if you drink enough beer you become

intoxicated and you act in that manner.

And I think you should take, with a grain of salt, when a person says I had about so many, it is typical of a person who drank too much. He sort of lowers the amount he has drank; and, furthermore, besides the testimony of the appearance of Mr. Bellows on that evening by the defendants, his condition or his appearance of being intoxicated, I would submit there is no question was confirmed by his own witness, Mr. Miller. He appeared intoxicated to his friend.

So I think on the question of good faith, perhaps the subjective aspect of it, the plaintiff -- excuse me, the defendants had reasonable cause to believe that Mr. Bellows was publicly intoxicated. Objectively, as I say, that is, from their own observation and confirmed by other people's observations.

And the -- that is subjective, of course -- you know, whether a person is intoxicated to that extent is, of course, a question of judgment. It is also typical, I would say, of a person who has been intoxicated, says no, I wasn't that loaded. It is typical.

36 So I do not think you should put much credence in Mr. Bellows' contention "I wasn't drunk." Maybe he was not that drunk, because, frankly, my clients here determined that while his condition had not changed, he was not that drunk,

he was not a danger because his attitude had changed and released him. I think objectively and subjectively, and there is an objective question here and a subjective question, they acted in good faith in taking him into custody or arrest.

Now, it is also part of our defense, and I wish to emphasize, that the good faith is demonstrated by the fact that once they did not have this belief any more, they immediately let him go. And the judge will tell you that they had a right to do so. There has been some imputation that a person who is arrested has a right to call his lawyer,has a right to be brought before a judge, et cetera. You know, there is a whole panoply of constitutional rights. And there is no question about that.

However, all of that, I submit, and I think there is no question, that comes into play when the arrest is completed, when you come down to the station house. Normally, at the station house you make a call to your attorney. You have to if you are going -- when you are booked, then you have to be brought before a magistrate, but if at any time the police officer determines or decides not to complete this process, he simply lets him go. He has to act quickly in these matters. Often times the decision to arrest has to be made on the spot and in a split second.

You have to realize that you can have dangerous

situations brewing. There was indication, there has been testimony, that there were these two friends, and they got up and these troopers here were concerned. They may be big men, but they do not want to have an altercation involving themselves.

So I think that it is quite abundant that they acted in good faith here. And the height of good faith, frankly, is that they were released -- or, excuse me, Bellows was released five, ten minutes later. It just doesnot follow that somehow his constitutional rights were being violated by being released.

At that point he was free of any possible restraint or custody. He wanted to leave the car, that's what he did. He left the car. He did not say, "Take me to the station house, I want to now call Mr. Rosen." In fact, I think Mr. Rosen seems to be concerned that he never got an opportunity to go down to the station house or the J.P. and turn Vincent Bellows loose again. He seems to take pride in that.

I further point out as to Mr. Bellows' attitude, you have heard -- and I think it was right on -- right in Mr. Bellows' testimony -- that he has been trained, apparently trained, to be uncooperative with the New York State Police.

Now, consider for yourself, I think if while everyone has rights and there is nothing wrong with asserting your

rights, I think that it is something to consider when you consider Mr. Bellows' credibility, this training, and, of course, this training was given to you solely for the purpose of saying he would not cry in the car. Apparently it seems to be a big insult that he would have cried in the state policeman's car. I do not see what it has to do that much with anything. Crying is a human emotion. I do not think it lowers a person in anybody's esteem. It certainly in this case resulted -- one of the partial factors in -- he had identified himself. The defendants, the state troopers, decided he was not a danger and just bring him back and let him go.

Now, I would submit, of course, at this point that the defendants -- excuse me, the plaintiff did not submit -- sustain his burden of proof. And, by the way, he has a burden to sustain every element of this case by a preponderance of the evidence, which the judge will explain to you, and we have this -- and if he does not, the judge will explain that the defendants should prevail.

But furthermore, the defendants have this defense of good faith in their action, so even if they might have been wrong, if they acted in good faith, this is a defense to this action. I feel that you should find that, also.

I wish to emphasize that, once again, there is no

evidence in this case of any physical injury, there is no claim, there is no doctor's evidence. And I feel that the defendants have sustained the good faith defense, that they had reasonable belief in the lawfulness of their action, and in these circumstances that beliefwas reasonable.

I have pointed out to you, I think, this -- you know, the circumstances make it highly unlikely. It is simply Mr. Bellows' word against the two state troopers. Once again, I emphasize that you have two individual defendants here.

Now, I assume and trust that you will find for the defendants, but I feel I must consider the possibility that you may find for the plaintiff.

I wish to discuss the question of damages. Now, the judge, once again, will give you instructions on damages, but I wish to emphasize that the only damage here is five, ten minutes sitting in the back seat of a car, no handcuffs, no restraint, just simply sat there and came back to basically the same place, maybe a blockaway.

As I pointed out, in this regard I think it is ludicrous to complain that the defendants did not take Mr. Bellows to the judge. This would have takenhours. At that point Mr. Rosen would be here claiming how many hours he was deprived of his liberty improperly. But all he can say to

you here is five, ten minutes.

As I say, Bellows wanted -- he wanted to leave the car, so that even if you found that there was some violation of constitutional rights, that clearly ended when he was released from the car, and since there was only five, ten minutes involved, it is a de minimus period of time. There was no record made of this, there is no embarrassment about this, and you should recognize, I think, that this very strongly limits any possible damages. There is no claim, once again, anything happened because of this.

Now, as I say, there is a claim that when he was arrested he might have been picked up or an arm twist or whatever. Now, once again, I think the testimony or the preponderance of the testimony -- I don't think plaintiff has sustained his burden. I think that there is strong evidence, once again, it did not occur. There was an assist to get up and he went over to the car.

Now, I think you should realize in this regard that when he left the car, when he was released, he simply walked away. And I think as to the alleged blow in the car, once again, no claim of physical injury, there was no showing that it was done to inflict harm or injury, and I wish to emphasize, once again, that this is a case, the violation of constitutional rights, it is not a simply assault case.

Of course, the allegation of assault is an element, but it is basically whether these defendants did deprive this plaintiff of any constitutional rights.

37

Thus, I would submit to you that even if you find for the plaintiff that all that would be appropriate in this case would be a nominal sum.

Now, the judge has stated he is going to charge you on punitive damages, which he will, of course, state the law. Punitive damages are not to compensate actual damages or any nature of compensation, they are to punish the defendants.

Now, there are certain standards that have to be applied to this, and I think that when you consider the whole circumstances of this case it is rather outlandish to make such a claim. I would put to you, of course, it is very simple to write a complaint and put a number of zeros after it. This is typically, frankly, what lawyers do.

But I submit that in this case any consideration of punitive damages is totally unjustified. There was no malice or ill will here. There is no evidence that the defendants was seeking to get Bellows. In fact, I, once again, point out if they were seeking to get Bellows, they would not have let him go right there five minutes later. They had him, they would have brought him in.

THE COURT: Would you wind up?

MR. GREENWALD: Okay; yes.

I think I emphasized, I think, there is nothing oppressive or wanton about the conduct here, and, as I say, even on the alleged punch in the car, once again, there was nothing aggravated. I wish to emphasize, of course, that the defendants totally deny it. They totally deny the use of force, and it is simply plaintiff's unsubstantiated allegation that this occurred.

And in conclusion, I would request that you return a verdict for the defendants.

Thank you.

THE COURT: Thank you very much, Mr. Greenwald.

Mr. Rosen?

MR. ROSEN: Thank you, sir.

If the court please, ladies and gentlemen:

This is not an assault case, this is not a personal injury case, this is a tramatic effect upon an individual who was taken into custody, held by the police without justification, and that is what the purpose of the civil rights law is aimed at.

I want to read you the statute itself under which we are suing. Title 42, United States Code annotated, Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom or useage of any state or territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof, to the depravation of any rights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at lawsuit in equity or other proceeding for redress."

That is why we are here. I said at the beginning, and I say it to you now, we never claimed that the punch in the ribs in the car created a permanent injury; never made such a claim. We said they did it and that we do not claim permanent injuries.

The question is, what right has anyone to give any citizen, without justification, a punch in the ribs in the car? And as you have just heard repeatedly said, that allegation was not corroborated. Of course. They did not invite me to join the car; they did not invite Mrs. Bellows to join the car; they did not invite David Miller to join the car. The two policemen had him in the back of the car in their custody and took him away, and they come back and tell you, you know, who is going to corroborate him? That is the vice these laws are designed for, a citizen must be free.

You have no right to walk up to anybody and say: Who are you? What are you doing here? What was he doing? He was sitting in front of his house.

Now, let us take up this whole story: The training the purpose for and the enjoyment that Mr. Rosen has in turning him loose. This series of incidents has constituted a section of my career. I have made it possible that any hour of the day or night, seven days a week, 365 days a year, if Vincent Bellows calls me, I go at once. And I will be at the station house before the police arrive.

Why? That is the big question. These officers--and you must understand this, I am not naive -- if you say to an officer, did you hit the defendant in a police car, do you think for a moment he is going to say yes, I did? For one single instant? Of course not.

But the fallacy of their case lies in one point: He said, you see, we did not violate his constitutional rights when we let him out of the car. Of course they did not violate his constitutional rights when they let him out of the car, they violated it when they put him into the car. That is when it occurred. And it makes no difference if they held him five minutes or five days, because his rights tramatically, personally, mentally, were violated and they had no right to do it.

How do we prove it? Counsel for the defendants says the fact that they released him so promptly evidences their lack of malice, their lack of hostility and their lack of being mean to the plaintiff. The closer the time, the shorter the time it was that they kept him, the more they confessed their guilt, because the shorter the time, the less reason there was to take him in the first place.

If you can tell a man is not intoxicated in the space of two minutes, how do you take him away and say he is so intoxicated he does not know what he is doing? You see, there is an illogical sequence there. They say, look, we let him go quickly. Sure they let him go quickly.

Look at the conduct of Vincent Bellows, the so-called intoxicated person. First, when the police come to him he is well informed. He says to them -- he had a background of experience, always successful -- he says to them, "I'll give you my name. My name is Vincent Bellows, and that is all I'm going to tell you." Is that the act of an intoxicated man?

Logically, later they come, they grab a hold of him. They both admit they helped him. That is a police statement. We helped him. If we bang him over the head, we help him. They never used any force in this case, it is absolutely unheard of, it is a figment of the imagination of

Vince Bellows, because they treated him like a brother. They took him away in a case they had no interest in.

38 What did they say in their answer in this court?

Eleven of the amended answer reads as follows-- I want to read it exactly:

"Any use of force by defendants on plaintiff was necessary, did not inflict any injury, and was applied in good faith effort to effectuate the arrest or detention."

That is what they wrote. That is what I was served with. And yet here we never touched him, we did not do a thing. We put him in the car and he was glad to get out. Well, if he was glad to get out, he was even gladder not to go in.

I could show you these things. Let me show you. They said -- I listened to this as you did -- what has the crying got to do with it? It did not make any difference one way or the other. But it was demonstrated by these two defendants that because the defendant cried they were going to show him pity and mercy and were convinced he was no longer intoxicated. And what didn't he tell them? He did not tell them his age and address.

If he was intoxicated -- I showed that very clearly today -- what has that got to do with whether he is drunk? In other words, when they came back they knew he was not

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intoxicated. They were going to give him a little ripoff because he gave them lip. You are not supposed to be knowledgeable, you are supposed to submit when a policeman says to you, what are you doing?

I have seen too many cases. You tell a man, a policeman, something, and you will be arrested for whatyou told him regardless of whether you were guilty or not. And the best answer --

THE COURT: Mr. Rosen and ladies and gentlemen, please do not go into general experience. We are sticking to the facts in this case.

MR. ROSEN: I have indicated, in their answer regardless of what they say and at a time when there was no trial and plenty of contemplation of what they could do, they admit that the force they used was necessary to arrest him.

MR. GREENWALD: I object to this.

THE COURT: I think counsel has the right to read the answer.

MR. ROSEN: And to comment on it.

THE COURT: And to comment on it. Yes. I would not use the word "they" assert.

MR. ROSEN: That is their allegation.

THE COURT: I say, that is an assertion.

MR. GREENWALD: It was a defense. We have the denials in another place.

MR. ROSEN: When you make a statement of fact, sir, they are bound by them.

THE COURT: I did not say you are not. I said I do not think it is proper to describe them. It is an assertio

MR. ROSEN: That was their statement of their defense to this case.

The force they use, which they now deny, how does that fit into the concept of this paper being a defense? In one case they said they did it, and here they deny vigorously and falsely. If this is one statement, then the other is false. And that bears on good faith and what they have done.

Let me show you something about false testimony. When I asked Officer Dainack today: Well, you did not say to the state police when they were investigating the complaint of Mr. Bellows that he was identified at all by Homer Salsbury? Well,he did not tell me his name. So he did not identify him.

Remember, you are standing in the street, a man says you're the person. Is that an identification? What semantic reasoning is that to say he did not identify him because he did not give him his name if he pointed out the

specific person?

Now, Homer Salsbury is not here. This is a whole mirage. The proper word is called obfuscation. Mr. Bellows had nothing to do with that.

And with respect to this whole thing, they called in Madison. Madison and I have known each other. Madison was standing 90 feet away, 90 feet in a dark country road. There are lights along any highway two, three hundred feet apart. And he could see in here. He denied he heard; he did not know; he had no concern.

Let us take these people. They say they had no malice. No malice. Let us show you what malice is. It is odd about these cases. You must show malice. You do not expect a person to come into court and say: I am a police officer and I hate you, I have malice toward you. I am going to get you. You are not going to do that, never.

But in this case Dainack and Van Houten tell Salsbury, who has been horsing around in the telephone booth -- and if you are a person in a small town and you horse around in a telephone booth, people assemble and just look at you. He comes out of the phone booth and they tell him, "You've got a complaint to make?" They do not arrest Mr. Bellows. No complaint was made. They did not investigate, nothing; nothing at all.

Where is Salsbury? They brought down from Madison from Livingston Manor for today. Salsbury is there. Where is his complaint? Where is their defense? They are proving the defense. I do not have to bring them. It is their proof. They say this occurred.

Let us take it at its face value. They told Salsbury we have nothing to do with this, it did not occur in our presence. Go to a judge, make a complaint tomorrow morning. It was not done, but that is what they told him.

They come back to examine Mr. Bellows. They were not longer concerned whatsoever with the Salsbury complaint. Then, what did you come back for? To give Bellows a work out? Because he would not talk to you? Because he gave you lip?

To the average person you say, why don't you cooperate with the police? They are doing their job. That is the general concensus.

These men told Bellows: We are going to take you to the state police barracks and we are going to fingerprint you.

Bellows is supposed to be drunk and cooperating, and the first thing he shouts out to everybody around there, "Get my wife or get somebody to call my lawyer." Right then and there, instantly. Is that the act of a drunken man? How? How does it ring? And if he was drunk and could do

these things, he is pretty much not drunk.

Then they come back in no time at all, that he is no longer drunk, he can take care of himself. He is the same fellow who stood at the phone booth, he is the same person sitting on his stoop, he is the one who said he would not give more than his name. He is the same one who said I want my lawyer immediately, and that very night he made a complaint against him for an investigation by the state police for what happened here that night.

39 You come before a court and say malice. What more do you want a person to prove than doing things they should not do? They should not do it. And if you do it, that is malice. And these people come along and say exonerate us because we acted in good faith. Good faith; had good faith.

What is good faith? If I do something to you that is wrong, no matter what I think, it is wrong. A statute says -- they will read it to you; the judge will read it to you -- in which it says when a policeman is convinced that there is no cause to make an arrest, you should release the defendant immediately, but that is no defense. Why did you take him in the first place? This is the purpose of the civil rights law, to stop police doing these things, to stop people like them, not to take people into custody.

Now, I will put it to you very plainly. Which one of you would like to be grabbed at night and taken in a police car on a dark road, not knowing what is going to happen, even if you are brought back in five or ten minutes, leaving your friends in the street to wonder what is going to happen? How would you like it? How would you like a member of your family to be in that spot?

So when you talk about good faith, we let him go right away, my God, how much is just five minutes of your time? We are not suing for five minutes of our time, we are suing for the fundamental right as a citizen that this should not happen, it should not happen. You lock up a man for what he has done.

The judge asked the witness, did you see Bellows doing anything sitting on the stoop? No.

He asked one or more witnesses, did you see him engaged in any fight? No. Did you see him do anything? Now they reverted back to their sole basis of escape, they say he was drunk.

You know, communities live differently, and each community that you live in has a different methodology of living. In the rural areas drinking beer is not considered anything different than like drinking water. And a person goes to these carnivals they drink beer. They come back;

they're not drunk. They drink it because that is the local beverage. And they drink it in more or less greater quantities, and they do not become drunk because in this case the events showed that at every single crucial moment Vince Bellows acted like a rational, knowledgeable human being, fully possessed of his faculties.

What would you say and what would anybody say when they are seized by the police? Get my lawyer. If he has any brains, he is going to get his lawyer quick. Now, these officers realize that.

On the question of the crying, we showed the prior background of Vince. They had him on the stand and they could have asked him if he was ever convicted of a crime. They did not. And the court will charge you that is a method of impeachment. You can say a person is not telling the truth because they have had a criminal record. Why in this case with all these arrests is there no criminal record? They had a right to ask. They know the rule. None. They know. Why all these arrests?

Would a man like Bellows starting at age 17, with this state police barracks and people there, down to now 28 years of age, or down to 1972 when this occurred,be the kind of an individual who has fought them continually, be the one to say "You never gave anybody a break," and the one to cry

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in the car? And if you do not believe that, then you should find a very substantial verdict against these men for having done something that is wrong.

I am against criminality, we are all against criminality, but there are certain things. That is why the civil rights statute was passed by congress, to override the states and to override police departments, that they should not, when wearing police uniforms and having the power of officers, do these things to individuals, because today it was our turn and tomorrow it is yours.

We, the lawyers, who stand at the front and take the brunt of it, have our say about this, and we do not want to tolerate it for a second. And if he had arrested him, as they said they did, they were honor-bound to take him to the state police barracks, and whatever they be liable for, whatever they would not be liable for, would be decided in court.

Why did they let him go? Was it because he said he wanted his lawyers so quickly and wanted me? Did they really know who Bellowswas and who I was and what I had done in the past ten years for Bellows?

They say they did not know him. Bellows said he did not know them. But that does not mean they did not know him. They came from the state police barracks at Ferndale. And when they gave the story of how far they were away from

one another, ten or 15 feet, and that Bellows gladly got into the car, it was perfectly all right with him, simultaneously shouting to get his lawyer, how do you like that? Come with me. And while you come with me, shout for your lawyer, shout for your family. That shows you went voluntarily, or does it show that you went involuntarily. Who told the truth at that minute?

Now, there were many things in the course of the trial that we brought out. I would like to mention firstly about the question of identity. I mentioned that before. Identity is a peculiar thing. Here is a fellow living in the town 15 years. He is a local boy there. All the police had to do was inquire. And if Madison was right there, see Madison. I always have him in rebuttal, Madison. Madison was right there. He could say that is Vince Bellows, that is David Miller, my competitive salesman in another sporting goods shop.

Take a look at the timing. The police said it was five or ten minutes; Madison said he saw it an hour later. Madison was not there, that is where the problem is. That is always the problem with Madison.

40 Now, the police officer made a decision. They made a decision. This is one of the most deadly violations of civil rights you can have. If he can make the decision to

arrest and he can make the decision to let you go, when does he make that decision if he should decide to take you somewhere and keep you 24 hours, 24 days, 24 months? And then says, you know, I have decided that I am going to not arrest Jane Doe or John Doe. I think he is not guilty. I will let him go. Nobody can do anything to me,you see, I let him go and did not even arraign him.

The purpose of the arraignment is to bring a man into court so that the judges, the district attorneys, the lawyers, will prevent anything happening to him. But the idea that just because they said within two minutes or five minutes or eight minutes that they decided he was no longer intoxicated, the speed of that decision was also the speed at which they should not have arrested him at all, had no right, no basis, no justification. And that is malice, because no man should do a thing like that to another; no person should do it to another man or woman and then say I let him go, and then give him a gold medal because they let him go in 10 minutes instead of 10 hours or 10 days.

These are things to think about when you go into that juryroom. This is not an ordinary case, and you are called upon to think about it. And you say to yourselves, well, why did they do it? And if they let him go, why did they take him? Why did these officers deny it? That is an

officer.

You know, I remembered the cliche that they said to me in school when I was younger, "Lied like a trooper." I never thought I would come in contact with it in this case, how apropos that is here. They denied everything. They are two swell guys. They were so sympathetic, they let him go when he started to cry.

And his lawyer, their lawyer said here today, forget it, it is not important. What has the crying got to do with it? Well, if it was not important, how did they remember it for the first time today and yesterday and not when Bellows made the complaint to the state police to investigate what happened to him?

Imagine that. He promptly called us, he promptly complained at the state police barracks what happened to him, and they said he just left thereperfectly happy. Nothing at all. Nothing occurred. It was the sweetest lovefest you could imagine. Do you believe that?

You know, this is the point we say, we go before a jury and we tell them the truth. Is it better to tell an incredible lie or an incredible situation like this? Here is a situation where it actually occurred. They actually did it. There are no ifs and buts, and their defense is: Protect us jury people because we acted in good faith.

And just like their assertion of the act in good faith is open to question, they should not challenge us because we were kept in their custody alone. This is their danger. You do not keep a person alone free from observation of outsiders because whatever occurs there the person to whom it was done will not have corroboration and will be exposed to this act of whatever it is.

So when we say to you he was struck a punch, counsel says so, he was struck a punch, it was nothing permanent, it was nothing very serious, there are no apparent physical injuries, we are not suing for apparent or non-apparent physical injuries, we are suing for what took place.

Now, let us take up the question of damages. This type of case is not the same as a case when you sue for a broken car or an operation or a broken arm and the doctor's bill is so much. It is not that kind of a case at all.

The jury is vested with great power. The question is, firstly, compensatory damages. Do you think that we would take the time of the court, the time of the jury, my time, in order to recover the value of ten minutes of time or five minutes of time on the night of July 16, 1972? That attributes to us a lack of intelligence.

The idea of the damages, compensatory in nature here, is to put a person in a position whereby having been

deprived of a fundamental right as a human being, what are they entitled to get? And the courts have vested in the jury the right to say that we will give to this person, for what they did to him, X dollars.

We are asking for $25,000. It is up to you to decide. We think it is worth what happened to Bellows that night because they did it to him. And to restore him and to overcome the tramatic and personal effect upon him and the shock that was caused by the arrest and the subsequent release, is something that should be compensated for; and the fact that they are police officers should not give them immunity. They are not immune.

When measuring it, you say well, how do we measure it? We cannot take a ruler, nor can we take it like in a negligence case, if a person is earning $100 a week and is out of work four weeks, you can say we will give him the $400 a week he lost in salary, or give him $1,000 for the doctor; we will give him $500 for his clothes; we will give him another $5,000 for pain and suffering in the future, and you can measure it.

How do you measure it here? You have got to sit down in the juryroom and say these things occurred, and we think here that Mr. Bellows is entitled to a fair sum.

And how would you judge it? In your own common

sense, what would you want? Would you care for $5 or $10? You have a right to give even a dollar. But it is not for ten minutes, it is the life of the situation. The actual life of an individual to be free. Because if you are not free, you might as well be in a police state, and that is what we are.

Go out and capture the criminals, do not capture fellows like Bellows sitting there doing nothing.

Then you say to yourself, well, what would be right What is the compensation? What is a person entitled to be snatched away, arm twisted?

What did Miller testify to, a half story? We are under restrictions of the questions we can ask. All he was to testify to, what did he see? He said he saw them grab him by the arm and shove him in the car. Your recollection should control.

41 What else is he going to say? That is all, they threw him in. He said, "I smelled Vince's breath." If a person smokes a cigarette, for hours after someone in their company will be able to tell they smoked a cigarette. And when they asked Miller was he intoxicated, he said, "I knew he had been drinking beer because I could smell his breath. I was right close to him." Does that make Miller's testimony unbelievable? Because it is corroborating what Bellows said,

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that he was forced into the car.

Now, we reach the point, therefore, of punitive damages. Punitive damages are a separate type of damages created by the law, by courts, by decisions. There are certain kinds of cases, not criminal cases, where the jury must express its public view. It must dictate what it thinks should be done about a situation, and there is a warning that this situation should not occur no matter by whom, and that is called punitive damages, a punishment, and a warning that people should be free and that the police should not interfere with them. And we ask for that $50,000 damages.

The amount of the compensatory damages and the amount of the punitive damages do not depend upon the other, because they were determined by two different theories of law.

In the punitive damage situation --

THE COURT: Mr. Rosen, I just want to interrupt. I do not like to do this, but just so the jury is not confused by the law, since you are mentioning the law, while you are right that the theories of these two types of damages are different, as I will explain to the jury, nevertheless, unless the jury finds that the plaintiff is entitled to compensatory damages it may not, of course,also award punitive damages.

That is all I wish to say.

MR. ROSEN: Under the theory of punitive damages, if a person did an act or these two gentlemen did an act which we are complaining of here, and you disapprove of that act, of course, you have to find that they did the act without justification.

If Vincent Bellows was drunk and they properly arrested him, they should have gone through with it. If he was not drunk and they took him in for a ripoff, they had no justification.

First we come to the question of first compensatory and then punitive damages. You say what is the value -- the value -- of the time of Vincent Bellows? He was only a relatively young man of 25. Why is he worth $50,000? Because it could be you or someone like you next time. And they should know, beware, that the citizens can speak out and that you will pay a penalty, a severe penalty, when you do. And leave citizens alone. If they are guilty of anything, arrest them, prosecute them, put them in jail. And the longer the better. But do not fiddle around with these half fast sort of cases. Do not take people, snatch them off the streets. Do not try to show that you are wearing a gun and a badge and you have the power to do these things.

And the courts, the statute, gives these men police powers, but also gives them the penalty of respon-

sibility, and that is why we are in this Federal Court under the civil rights law. There are no more places we can go to stop these people. We have tried everything for 11 years. Was this an isolated instance?

THE COURT: Mr. Rosen, we are not going to go into the other instances on the merits of the case. You have about two minutes more.

MR. ROSEN: I will be through, sir.

I, therefore, ask you, in the limited time I have, to bear in mind the common sense of the situation. You have heard it. Nobody can change your mind by summations as to doing something you think is improper or wrong. But in the promulgation of your duty as individuals and jurors, and in the protection of the public interest, you must put a stop to this.

We ask you, therefore, to find a verdict in favor of Vincent Bellows for compensatory damages and separately a verdict which the judge will submit to you separately of punitive damages of $50,000 so that the public as well as Mr. Bellows will stand the protection of your verdict.

Thank you.

THE COURT: Thank you, Mr. Rosen.

MR. GREENWALD: Your Honor, I have a conditional request for a charge.

THE COURT: Let me see it.

Ladies and gentlemen, we will take a short recess so that you can stretch your muscles like the seventh inning, and you will come back for my charge.

(Recess.)

(Jury present.)

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen:

I am going to tell you now what the law is of this case. There is a good deal to tell considering this case has taken only about eight or ten hours to try. And I wish that I could just sit here and chat with you as the lawyers are able to do when they sum up, but because the law has gotten complicated and because it is important to all the parties that the judge be sure to charge correctly, that there be a solid record of it, I will read my charge.

I mention that, in the first place, so that you will understand why I read rather than merely talking to you; and, second, because I find, and the reporters corroborate this, that I have a tendency to read quickly sometimes, and if I read too fast or you do not understand what I am saying, please raise your hand and let me know.

Finally, I want to say that because the trial has moved along so quickly, there have been a variety of legal questions which you have not dealt with, of course, which have been presented to me, some of which it has not been possible to incorpoate as smoothly as I might otherwise do in my charge, and I may, therefore, wander a little bit to cover some of these miscellaneous points that have

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come up in the last few hours in discussion with counsel.

Ladies and gentlemen:

The time has now arrived for you to exercise the function for which you were summoned as jurors in this case; that is, the determination of a verdict.

I thank you, as I am sure counsel do, too, and the parties, for the careful attention which you have given to the evidence submitted by both sides. It is important that you should have listened to the testimony attentively because you are the sole judges of the facts in this case. You pass on the weight of the evidence; you determine the credibility of the witnesses; you resolve whatever conflicts there are in the testimony, and there are very important conflicts in the testimony in this case, and you draw whatever reasonable inferences are warranted by the evidence.

In determining the facts, as I have told you several times, you should rely upon your own recollection of the evidence. What counsel may have said from time to time during the trial proper or in their summations as to any fact, indeed, what I may have said or may say in these instructions as to any fact, is not to be taken in place of your own independent recollection of the evidence.

The plaintiff, Vincent J. Bellows, here seeks

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recovery against Dennis Dainack and Leslie Van Houten alleging that on July 16th or July 17, 1972, they unjustifiably deprived him of his constitutional right of liberty. He claims that they did this in several ways, specifically:

First, by taking him into custody without any reasonable cause; second, by exerting physical force on him without justification in two instances, the first twisting his arm to force him into their police car, the second by assaulting him inside the police car itself.

He asks that he be compensated for the damage and injury which he suffered and that the jury impose punitive damages for the purpose of punishing the defendants for their behavior and setting an example to the public so that the behavior alleged will not recur.

The response of the defendants, Trooper Dennis Dainack and Trooper Leslie Van Houten, to Mr. Bellows' charge is:

First, they were justified in taking him into custody on July 16th or 17, 1972 -- I say 16th or 17th because nobody is sure whether this happened before midnight or after midnight -- since they believed, that is, the Troopers believed, in good faith at the time that they apprehended him that he was committing in their presence the offense of public intoxication. As to the other

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charges of exerting force outside and inside the car, Dainack and Van Houten stoutly deny that they did so.

In this connection, I will make one of my asides. Mr. Rosen brought to your attention, properly I commented at the time, the fact that in the defendants' amended answer they asserted that any use of force which they had made was necessary and was applied in the good faith effort to effectuate the arrest or detention.

It is fair to the defendants to point out that in the same amended answer they also denied that they used any force at all.

Under the law, a party, and a defendant in particular, is allowed, in giving his wrriten answer to a written charge, to state any defense which might justify his behavior, even if those defenses are inconsistent with each other.

As I understand the position of the defendants at this time, however, now that the facts have been developed and they are on trial, it is not that they did use force but that it was justified, it is rather that they did not use force at all. Do you understand that, ladies and gentlemen?

The law provides that any inhabitant of this Federal District may seek relief in this court against any

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persons who, under color of any law, knowingly subjected him to the deprivation of any rights secured by the United States Constitution. The Fourteenth Amendment to the Constitution provides that no State shall deprive any person of liberty without due process of law. It is not disputed that Troopers Dainack and Van Houten were acting under color of State law on July 16, 1972; that is, the authority they possessed was conferred on them by the State and they were acting under color of State law in that regard.

The question you have to decide is whether they deprived Mr. Bellows of his liberty without due process of law, because it is possible for an officer of the law to be acting under color of law but without due process of law; that is, with authority but beyond his authority.

In discussing what Mr. Bellows must prove to prevail in this case, I shall treat separately his claims as to being improperly arrested from his claims of being mistreated, since the defendants, as I have indicated, assert different defenses to these two types of charges.

2 Let us talk first about his being taken into custody. As to that charge, the defendants do not deny that they took Mr. Bellows into custody, but claim that they were justified in doing so because at the time they

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believed in good faith that Mr. Bellows was committing in their presence the offense of public intoxication.

In order to prove his claim that the defendants violated his civil rights by taking him into custody on the night-morning of July 16-17, 1972, Mr. Bellows must establish by a preponderance of the evidence, which is a phrase I will explain later, the following:

First, that the defendants took him into custody. There is no dispute about this.

Second, that the defendants acted under the color o State law. There is no dispute on that question.

Third, that the defendants' conduct deprived Bellows of his constitutional right not to be deprived of his liberty without due process of law. This is the point on which there is a dispute, Bellows claiming that the actions of the Troopers were without due process of law and the defendants claiming that they were, within the framework of due process of law, acting in good faith and, therefore, their behavior was not culpable.

If the defendants did act within the limits of their lawful authority under State law, then the defendants could not have deprived the plaintiff of any liberty without due process of law, since I instruct you that the New York State law, which is applicable in this case, does meet the

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requirements of the Federal Constitution. In other words, if they obeyed the State law, which is a constitutional law, they would not be responsible for the charge of taking him into custody.

That law is to be found in Section 140.10 of the New York State Criminal Procedure Law, which provides that -- and I am quoting from the law now:

"A police officer may arrest a person for any offense which he has reasonable cause to believe that such person has committed in his presence."

A further section of the law which is relevant has to do with public intoxication; that is, Section 240.40 of the Penal Law of New York State, and that reads, or read at the time of the events in question, that:

"Public intoxication consists of a person appearing in a public place under the influence of alcohol, narcotics or other drugs to the degree that he may endanger himself or other persons, or annoy persons in the vicinity."

As you know, Troopers Dainack and Van Houten say that they had reasonable cause to believe that Bellows committed the offense of public drunkenness in their presence. Put another way, they say they believed in good faith that he was publicly drunk at the time they took

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him into custody.

Whether the defendants acted in good faith is determined by a two-branch test:

First, did they have the subjective, private belief, that is, that they had the authority to make the arrest? That is, did the defendants in their own minds think they were acting with authority and pursuant to valid law?

But even if they thought so in their own mind, they must pass the second branch of the test, and that is this:

Was it reasonable for them to have such belief in all the circumstances? Or, put another way, in this connection you should consider whether an ordinary, reasonable person like yourself, placed in the circumstances of Troopers Dainack and Van Houten and with their experience, would, on the night-morning of the 16th of July, 17th of July, 1972, have believed that Bellows was publicly intoxicated in their presence when sitting on the stoop in front of his home.

Mr. Bellows denies that he was drunk, states that because he was sitting on the porch of his residence his behavior was not public; and finally says that the Troopers could not have been acting in good faith since

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they released him within a few minutes after taking him into custody, and his condition had not changed at all during those few minutes.

In the case at hand, the issue on this claim boils down to whether the admitted taking of Mr. Bellows into custody was done within the limitation of the Troopers' lawful authority.

If you find from a preponderance of the evidence in the case that the defendants did act within the limitation of their lawful authority at the time, then you should find that they did not deprive of Mr. Bellows of his liberty without due process, and your verdict would be in favor of the Troopers.

But if you find from a preponderance of the evidence that the defendants did not have reasonable cause to believe that Mr. Bellows was publicly intoxicated in their presence and did not so believe in good faith, then you must conclude that the defendants acted unlawfully, contrary to the law of the State of New York and contrary to the Constitution of the United States, and return a verdict on this claim for Mr. Bellows.

In that connection, there has been some discussion as to what the law of the State of New York is with regard to the obligation of a policeman or Trooper who does

take somebody into his custody. I will tell you what that law is, but it is correct that the statement of law does not constitute a defense, it simply tells you a fact that has been raised and is disputed in the course of this trial.

The law of the State of New York is -- this is the Criminal Procedure Law, Section 140.20(4):

"That if, after arresting a person for any offense, a police officer on further investigation or inquiry determines or is satisfied that there is not reasonable cause to believe that the arrested person committed such offense or any other offense, based upon the conduct in question, he need not follow any of the procedures provided above, but must immediately release such person from custody."

That is the law of the State of New York and would justify a police officer in releasing somebody. However, it would not justify a police officer in taking somebody into custody. And the question that you must determine is whether the taking into custody was justified or not.

Let us go to Mr. Bellows' claim that he was deprived of his constitutional rights by being subjected to physical force by the alleged twisting of his arm to

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force him into the car, and by the alleged pulling him by the scruff of the neck and striking him in the ribs within the car. As to these separate incidents, the sole issue before you is as to whether either or both of them occurred.

As you know, Mr. Bellows asserts that these events did occur, and the defendants deny it. It is for you to decide whether you believe that either of the events occurred or not.

If you find that Mr. Bellows established by a fair preponderance of the evidence that either of the defendants applied physical force to him before getting into the car, or that Mr. Dainack did so while he was in the car, you should return a verdict in favor of Mr. Bellows against that defendant or those defendants.

Since the defendants deny that these events occurred, you need not concern yourself whether any possible use of force was reasonable or exerted in good faith. The defendants themselves make no such claim. They claim, rather, that force simply was not exerted.

If, on any of the points discussed above, your verdict is in favor of Mr. Bellows, you must then, but only then, determine what damages are to be awarded. As you have heard, Mr. Bellows makes claim for two types of

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damages - compensatory and punitive. I will discuss them separately.

Compensatory damages are intended to give reasonable reparation to the plaintiff for any damage, physical or emotional, which you find he actually suffered and which was proximately caused by the defendants' behavior.

The term "proximate cause", by the way, is defined as follows:

Damage is proximately caused by an act whenever it appears from the evidence that the act played a substantial part in bringing about the cause of the damage, and that the damage was either a direct result or a reasonably provable consequence of the fact.

Such a sum, that is, a sum in compensatory damage, would be an amount which will reasonably compensate Mr. Bellows, or would reasonably compensate him if you find that he is entitled to compensation for the violation of his constitutional rights.

In addition to actual or compensatory damages, the law permits the jury, under certain circumstances, to award a plaintiff punitive or exemplary damages to punish the wrongdoer for some extraordinary misconduct and to serve as an example or warning to others not to engage in

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such conduct.

If you find from a preponderance of the evidence in the case that the plaintiff is entitled to a verdict for actual or compensatory damages; and further find that the act of either defendant, which proximately caused actual injury or damage to the plaintiff, was either maliciously or wantonly or oppressively done, then you may, if in the exercise of your discretion you choose to do so, add to the award of actual damages in the amount you agreed to be proper as punitive and exemplary damges.

I should insert here, you may award punitive damages but are not required to do so. And by making that statement, I am not suggesting what your course of conduct should be, I just want you to understand the law.

I must also tell you, however, that unless you find that Mr. Bellows is entitled to compensatory damage, you may not award punitive damages.

An act or a failure to act is maliciously done if prompted or accompanied by ill will or spite or grudge toward the injured person.

An act or a failure to act is wantonly done if done in reckless or callous disregard of, or indifference to, the rights of the injured person.

An act or a failure to act is oppressively done

if done in a way or manner which injures or damages or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness or disability or misfortune of another person.

Whether or not to make any award of punitive or exemplary damages, in addition to actual damages, is, as I have said, a matter exclusively within your discretion; but you should always bear in mind that such extraordinary damages may be allowed only if you first unanimously award the plaintiff a verdict for actual or compensatory damages; and you should also bear in mind not only the conditions under which, and the purposes for which, the law permits an award of punitive or exemplary damages, but that the amount of such extraordinary damages, if awarded, must be fixed with what the law calls calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of either any sympathy or bias towards the plaintiff, or prejudice with regard to the defendants or persons in their position.

Before I close my instructions, I wish to give you a few further definitions of critical terms which I have used. The term "a fair preponderance of the evidence" simply means that the evidence on an issue must be more

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persuasive and more convincing than the evidence opposed to it. It does not refer to the number of witnesses or anything of that kind, but to the quality of the evidence.

In determining the questions before you, and particularly the questions of whether or not force was used here, you will, of course, have to determine the credibility of the witnesses who have testified here, that is, the extent to which you accept what they have told you.

I want to make another aside for a moment; that is this:

The defendants here have said -- I do not like to use the word "admitted" or "not denied" -- that they did take Mr. Bellows by his arm to the car. They have asserted that that was assisting him to the car. Literally speaking, that is the use of physical force, but it is not the kind of physical force that the statute contemplates here. So that if you believe the defendants' version of the story in that regard, you should find in their favor. If you believe Mr. Bellows' version, you should find in his.

How do you go about determining the credibility of a witness? Perhaps the best answer is to state that you determine the truthfulness or accuracy or weight to be

hsl6

given a witness' testimony in the same way that you determine that matter in your own personal affairs. After all, we are all constantly called upon, if you think about it, from day to day to determine how much confidence we place in the statements that people make to us. The truthfulness or dependability of a witness, as that of any other person you deal with, can be determined by his demeanor; that is, his look, his relationship to the case and to the parties, the possibilities of his being biased or partial, or of his not being biased or partial, the stake that he may have in the outcome of the case, the reasonableness or the unreasonableness of his statements, the strength or weakness of his recollection, and the extent to which what he has said has either been corroborated on the one hand or contradicted on the other by testimony of other witnesses or exhibits or stipulations.

Of course, the testimony of a witness may also be impeached by his own prior inconsistent statements, if you find that any were made, unless there is some explanation for the inconsistency.

In ordinary life, when you need to determine the truthfulness of a person, you ask yourselves, don't you, as you would here, how did he or she impress me? Did he, or his version, appear straightforward and candid, or did

hsl7

he appear to be trying to hide some of the facts? Did he have any motive to testify falsely or no motive of that kind?

The ultimate question for you to decide upon in passing on the credibility of a witness is whether the witness told the truth before you. It is for you jurors alone to determine the weight and credit to be given to the testimony of every witness in this case, and in making these suggestions I am giving you guidance only, I am not attempting to suggest what your findings should be.

Ladies and gentlemen, to simplify the procedure by which you reach your decision, I have prepared a list of specific questions for you to answer, and I will read them now in the hope that my reading them to you will make you understand them as clearly as possible.

"1. As to Bellows' claim that he was improperly taken into custody, do you find from a preponderance of the credible evidence" -- and I should have used the word "credible" throughout my charge -- "that the defendants had reasonable cause to believe that Vincent Bellows was publicly intoxicated in their presence on the evening of July 16, 1972, and that they acted in good faith in taking him into custody?"

That question is to be answered yes or no.

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"2. Do you find from the preponderance of the evidence that the defendants or either of them applied physical force to Vincent Bellows by twisting his arm to force him into the police car on the night of July 16, 1972:

"A: As to Dennis Dainack?"

Yes or no.

"B: As to Leslie Van Houten?"

Yes or no. And you must determine this separately as to each of the defendants.

"3. Do you find from the preponderence of the evidence that the defendant Dennis Dainack applied force to Vincent Bellows within the police car on the night of July 16, 1972?"

Again, this question is to be answered yes or no.

Now, the instruction then says:

"If the answer to all of the questions above is no, go no further,"

because if you have answered all those questions "No", ladies and gentlemen, you found against Mr. Bellows on everything, and that is the end of it. You do not have to answer any answers about damages. But if the answer to any of the questions above is "Yes", then go on to answer the next

hsl9

questions which have to do with damages.

Those questions are as follows:

"4. How much actual physical or emotional damage do you find that Vincent Bellows suffered as a result of the events of July 16, 1972?

"A. With regard to being taken into custody?"

And there is a blank with a dollar sign.

"B. With regard to physical force getting into the car?"

Another dollar sign.

"C. With regard to physical force inside the car?"

There is a third dollar sign.

By the way, you obviously will only fill in the blank with regard to which you made a finding up above that there was some damage.

"5. Should punitive damages be awarded against the defendants or either of them in accordance with the instructions given you by the Court?"

That is answered yes or no.

And if the answer is "No", go no further. But if the answer is "Yes", answer the next and last question:

"6. The amount of punitive damages awarded

hs20

are as follows:

"A. As to Dennis Dainack", so many dollars.

"B. As to Leslie Van Houten", so many dollars.

Ladies and gentlemen, I am going to give or ask the Clerk to give a copy of this list of questions to the Forelady to take with you when you go into the jury room. I want to comment only at this point that you will find that there are a few corrections on the list of questions, and that is because after discussion with counsel I believed those corrections were necessary; and when you find them, they are my corrections and they are part of the questions, and those words must be considered along with the whole question. I am sure you understand that.

Ladies and gentlemen, your duty is to try the issues fairly and impartially, without sentiment and with a sense of justice. You must not be concerned with who or what the parties are. All parties stand equal before the bar of justice.

Your final determination of the facts must be based on the evidence. Each juror is entitled to his own opinion, but you are required to exchange views with your fellow jurors. That is the very purpose of jury deliberation. It is your duty to discuss the evidence. If you have a point of view and if, after reasoning with other

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jurors, it appears that your judgment is open to question, then, of course, you should not have hesitancy in yielding your own point of view. If, that is, you are convinced that the opposite point of view is really one that satisfies your own judgment and conscience. However, you are not to give us a point of view that you conscientiously believe in simply because you are outnumbered or outweighed.

To return a verdict on any question, your determination on that question must be unanimous. So each one of these questions must be separately decided, and to reach a verdict it must be either a yes or no unanimously on each question, and the dollar figure, if any, entered must be agreed to by every member of the jury.

Ordinarily, in the deliberations of the verdict, the first juror, that is, Juror No. 1, is chosen to be the Foreman or Forelady of the jury and to preside over your deliberations. I will, therefore, ask Mrs. McKnight, who is Juror No. 1 here, to act in that capacity. It does not mean she has any greater authority than the rest of you, it simply means that she will preside at your deliberations and she will be the one who will see to it that the Marshal, who will be standing outside of the door, is advised when you have reached a verdict, or if you have any questions to put to the Court or any requests to

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make.

I want you to know that you are free to request, through your Forelady, any of the evidence in this case, documentary or otherwise. You are free to ask that any of the testimony be read back to you that is in the record, or to ask the Court to explain or reread any part of my charge.

You should feel free to use those privileges, if you wish to do so, although I am not encouraging you one way or the other. In a case that has been this short, where the testimony is as clear-cut as it is, I do not think you will need to do those things, but you certainly have the right to do so.

Ladies and gentlemen, I have come to the end of my charge. I want to confer briefly with counsel in the robing room to see whether they believe that any corrections or clarifications are necessary. If you will just stay in the jury box, we will return momentarily.

(In the robing room.)

THE COURT: Mr. Greenwald?

MR. GREENWALD: When you were reading the special verdict, I think you had the word -- 4, line 2 -- "evidence" as written; you read "events". I think you meant to read "events."

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THE COURT: I did mean to read "events", and I corrected it for that purpose.

MR. GREENWALD: And I corrected mine.

Is there an addition to the front page? "Credible".

Furthermore, I think right at the beginning of this trial I did move to amend the title to reflect Trooper Van Houten's name is Brian, not Leslie.

THE COURT: That is correct.

MR. GREENWALD: I think you made that mistake. They tell me that was a popular singer.

MR. CORWIN: It was one of the Manson defendants.

THE COURT: Gentlemen, do you have any objections or further requests?

Mr. Greenwald?

MR. GREENWALD: Well, I just simply think --

THE COURT: You need not repeat any of this.

MR. GREENWALD: I think I expressed some objection to the form of this special verdict, and that is it.

THE COURT: Right.

Mr. Rosen?

MR. ROSEN: None.

THE COURT: Okay.

Thank you, gentlemen. I will just advise them

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to correct that name.

MR. GREENWALD: In two places, by the way, I believe.

THE COURT: In the questions?

MR. GREENWALD: Yes. There is one on the front page and then right at the last place "Brian".

THE COURT: Right.

(In open court.)

THE COURT: Ladies and gentlemen:

In reading these questions I referred to Trooper Van Houten as Leslie Van Houten, and he might be very glad to have the verdict relate to Leslie Van Houten, but the correct is Brian Van Houten, and it was my mistake because that is the way the papers in this case were filed originally.

I am making a correction on your copy of the questions, and I am simply now explaining what I am doing.

Ladies and gentlemen:

I regret that, since you have all survived in good health this day or two, I will now have to excuse Mr. Joseph Mehls, the alternate juror, with the thanks of the Court for listening and paying attention. The law does not permit me to allow you to deliberate if there is a full jury, and I thank your service, Mr. Mehls.

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Would you go into the jury room and get your things so that the jury can follow you after you have done that to begin its deliberations.

Madam Clerk, would you please proceed to administer the oath to the Marshal.

(Marshal sworn.)

THE COURT: Thank you, ladies and gentlemen. Will you go into the jury room and commence your deliberations.

(At 4.10 p.m., the jury retired to deliberate.)

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MR. GREENWALD: I would like to inquire at this time: Do the exhibits go in with the jury?

THE COURT: No, they do not. You can return these to Mr. Rosen. Just keep your exhibits. If they ask for them

MR. GREENWALD: I see.

MR. ROSEN: I thought you might want them.

THE COURT: It is my practice to leave them with the persons to whom they belong.

I am going to return to my chambers, gentlemen. It is my custom to request that if there is a request made for an exhibit, that counsel should cooperate with the clerk to see that that exhibit goes to the jury. If there is a request for any testimony to be read, I would ask you to find that testimony in the record. And if there is nothing controversial about it, simply proceed to have it read to the jury.

If you feel that I need to be here, you can tell that to the clerk and she will call me and I will speak to you on the phone to see whether I agree that I need to be here.

I would not expect that we are going to have any prolonged deliberation here, but one never is quite sure about these things.

I would hope that we could leave here at 5:30 or

6 at the latest, even if no verdict has been reached, because I, with all due respect to the troopers and Mr. Bellows, do not feel that it is justified to make the jury stay late at night deliberating over this case. But perhaps we will have a verdict by that time.

(Recess.)

(5:30 p. m.; in open court, jury present.)

THE COURT: Ladies and gentlemen, I know that you have not been deliberating that long, although this was a short trial, but as you note it is about 5:30 in the evening. It is my custom at this time to ask the members of the jury to go back to the juryroom and to decide among themselves whether they believe it would be productive to stay longer this evening or that they would rather return in the morning which, of course, you have to do anyway if you do not finish tonight.

Madam Forelady, would you return with the members of the jury and take a vote on whether the jury wishes to stay longer this evening or it does not. A majority vote I will follow, but I do not want to know who voted how. I just want to know what the majority was. Would you do that? We will wait right here.

(Jury excused.)

(Pause.)

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(Jury excused.)

(Pause.)

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THE MARSHALL: The jury wants 15 minutes more.

(Jury deliberation resumed.)

(5:50 p. m.; jury present.)

THE CLERK: Members of the jury, please answer present as your name is called.

(Roll call; all present.)

THE CLERK: Madam Forelady, has the jury reached a verdict as to the questions put to you by the court?

THE FORELADY: Yes.

THE COURT: Miss McKnight, Miss McKeen will read you the number of each question and ask you how you find. She is not going to read you the text of each question.

THE CLERK: How do you find as to question 1?

THE COURT: Is the answer yes or no, in other words

THE CLERK: Is the answer yes or no?

THE FORELADY: No.

THE CLERK: How do you find as to question 2A, yes or no?

THE FORELADY: Yes.

THE CLERK: How do you find as to question 2B?

THE FORELADY: No.

THE CLERK: How do you find as to question 3?

THE FORELADY: Yes.

THE CLERK: How do you find as to question 4A?

THE FORELADY: $4,000.

THE CLERK: 4B?

THE FORELADY: $4,000.

THE CLERK: 4C?

THE FORELADY: $4,000.

THE CLERK: How do you find as to question 5, yes or no?

THE FORELADY: Yes.

THE CLERK: How do you find as to question 6A?

THE FORELADY: $3,000.

THE CLERK: How do you find as to question 6B?

THE FORELADY: $2,000.

THE COURT: Mr. Greenwald, I assume you would like to have the jury polled?

MR. GREENWALD: Yes.

THE COURT: Will you read that verdict back to the jury and ask each member of the jury whether it is that juror's verdict?

THE CLERK: Members of the jury, please listen to your verdict as it now stands recorded. Do you say your answer to question 1 --

THE COURT: Let me intervene, please.

I think we better read the questions this time, too, so there is no doubt as to which one you are reading,

dhcg

and I will read it to you.

You say that as to question one your answer is no, and question one is as follows:

As to Bellows' claim that he was improperly taken into custody, do you find, from a preponderance of the credible evidence, that the defendants had reasonable cause to believe that Vincent Bellows was publicly intoxicated in their presence on the evening of July 16, 1972, and that they acted in good faith in taking them into custody?

So that the answer "no" means that you do not find that the defendants had reasonable cause to believe that Bellows was publicly intoxicated.

Is that your verdict?

JURORS: Yes.

THE COURT: As to question number two, do you find that the defendants, or either of them, applied physical force to Vincent Bellows by twisted his arm?

As to Dennis Dainack, the answer is"Yes"; and as to Brian Van Houten, the answer is "No."

Is that your verdict?

JURORS: Yes.

THE COURT: Number 3, the question is, do you find that defendant Dennis Dainack applied force to Vincent Bellows within the police car?

The answer is "Yes."

Is that your verdict?

JURORS: Yes.

THE COURT: Number 4 is, how much actual physical force or emotional damage do you find that Vincent Bellows suffered?

(A) with regard to being taken into custody, $4,000.

(B) with regard to physical force getting into the car, $4,000.

And (C) with regard to physical force inside the car, $4,000.

Is that your verdict?

JURORS: Yes.

THE COURT: Number 5, should punitive damages be awarded?

The answer is "Yes."

Is that your verdict?

JURORS: Yes.

THE COURT: Finally, number 6, punitive damages awarded are as to Dennis Dainack, $3,000; as to Brian Van Houten, $2,000.

Is that your award?

JURORS: Yes.

THE COURT: All right.

MR. GREENWALD: I believe at this time --

THE COURT: Is there anything we need the jury for? I do not believe so.

MR. GREENWALD: No.

THE COURT: Ladies and gentlemen, I want to thank you very much for your concentrated effort both listening to the testimony and in answering thequestions that were put to you. You were conscientious and workmanlike in your manner.

I hope you found this an interesting case. I believe myself that serving on a jury is the most important public function that a citizen, not actually a government employee, can perform, and I am very grateful to you for your helping me to dispose of this case. Thank you very much.

(Jury discharged.)

THE COURT: Mr. Greenwald?

MR. GREENWALD: Yes.

THE COURT: If you wish to make a regular motion at this time, go right ahead. I have to leave in two or three minutes because I am a train rider and I would rather not have to wait another hour.

MR. GREENWALD: At this time I would move for a judgment notwithstanding the verdict, judgment NOV. I so move.

THE COURT: That motion is denied. If you wish to renew it within the next ten days on papers, pointing out in what way you believe this verdict is against the weight of the evidence, why, I will be glad to receive those papers, and Mr. Rosen can reply to them.

MR. GREENWALD: Further, I would move to set aside the verdict as excessive, and specifically I move, number one, as to any of the three items of compensatory damages.

THE COURT: Let me say with regard to the question of amount, I will take that under advisement. I think it would be better if it was either argued more deliberately or if you wrote a very brief memo on the subject and allowed Mr. Rosen to answer it.

MR. GREENWALD: Yes, I think I would at that time present what I consider similar cases with the amounts awarded there.

THE COURT: That would be very helpful.

MR. GREENWALD: I think it would be shown it is excessive. Thank you.

THE COURT: Very good. Thank you all, gentlemen.

MR. ROSEN: Thank you very much, Judge. Good night

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MAGDALINE SWEENEY , being duly sworn, deposes and says thats he is employed in the office of the Attorney General of the State of New York, attorney for Defendants-Appellants herein. On the 14th day of January , 1977 , she served the annexed upon the following named person :

ROSEN & ROSEN, ESQS.
Attorneys for Plaintiff-
Appellee
265 Broadway
P.O. Box 348
Monticello, New York 12701

Attorneys in the within entitled appeal by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorneys at the addresses within the State designated by them for that purpose.

Magdaline Sweeney

Sworn to before me this
14th day of January , 1977

Emanuel M Kay
Assistant Attorney General
of the State of New York